

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 458

MILTON COVERDALE, SHERIFF AND EX-OFFICIO  
TAX COLLECTOR, APPELLANT,

vs.

ARKANSAS-LOUISIANA PIPE LINE COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF LOUISIANA

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[fol. 1]

IN UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF LOUISIANA

In Equity. No. 615

ARKANSAS-LOUISIANA PIPE LINE COMPANY,

vs.

MILTON COVERDALE, Sheriff and Ex-Officio Tax Collector

BILL OF COMPLAINT—Filed October 15, 1934

To the Honorable Ben C. Dawkins, Judge of the United  
States District Court in and for the Western District  
of Louisiana:

The petition of Arkansas-Louisiana Pipe Line Company,  
a Delaware corporation qualified to do business in Louis-  
iana, with respect represents:

1

That petitioner is a citizen and resident of the state of  
Delaware, and that Milton Coverdale, Sheriff of the Parish  
of Ouachita, Louisiana, defendant herein, is a citizen and  
resident of the Parish of Ouachita within the Western Dis-  
trict of Louisiana.

2

That the amount in controversy herein exceeds the sum  
of Three Thousand (\$3000.00) Dollars.

3

That petitioner is engaged in the states of Louisiana,  
Arkansas and Texas in the business of producing, buying,  
transporting and selling natural gas, in which business it  
owns and maintains systems of pipelines among which is a  
twenty inch (20") line extending from Sterlington, Ouachita  
Parish, Louisiana, westward through the state of Louisiana  
to a point at or near Blanchard in Caddo Parish, where one  
of its branches extends further westward to a point in the  
[fol. 2] State of Texas near Waskom, the other extending  
in a northerly direction into Miller County, Arkansas,

thence into the state of Texas through Atlanta and Texarkana and other points, and thence into the State of Arkansas to Little Rock in that state.

That from August 1st, 1932, until July 31st, 1933, the natural gas transported through the pipelines described was in part produced by petitioner from leases owned and operated by it in the Monroe and Richland fields in Louisiana, and in part purchased from other producers of gas in those fields, upon which all severance taxes due the state of Louisiana were paid when and as such gas was produced or purchased in accordance with the laws, regulations and practices applicable to such payments.

That of the total amount of the natural gas transported through the pipelines described from Sterlington, Louisiana, during the period mentioned in excess of eighty per cent. (80%) thereof was transported through the lines described and sold and delivered to purchasers in the states of Texas and Arkansas in interstate commerce.

That the lines described constitute the sole means of marketing the gas produced and purchased by petitioner in the Monroe and Richland fields; and that the pressure necessarily maintained in such lines is such that wells in the fields referred to cannot produce at their natural flow into the lines to permit the transportation and marketing of the product for which purpose petitioner owns and operates at Sterlington in Ouachita Parish, Louisiana, a compressor station known and referred to herein as the Munce Compressor Station.

[fol. 3]

Petitioner shows that the Munce Compressor Station consists mechanically of a number of pumps which are driven by ten (10) four cylinder Cooper Bessemer Internal Combustion engines, in all of which natural gas is used as fuel, buildings, employees' houses and a machine shop situated on land owned by petitioner and two (2) electric generators

propelled by gas burning Internal Combustion engines used to furnish electric energy for lighting the buildings at the Compressor Station and operating the machine shop and air Compressor; all of which are essential in the operation of the Compressor Station unit.

## 8

Petitioner shows that the number of engines and generators situated at the station is caused by the necessity of maintaining "stand-by" equipment for use in emergencies when other equipment does not properly function; that four (4) of the engines and one (1) generator described are made necessary for such purpose alone; and that the engines ordinarily employed in the operation of the plant seldom function at their maximum capacity.

## 9

That from August 1st, 1932, to July 31st, 1933, all gas delivered into petitioner's twenty inch line herein described at Sterlington and transported through said line to various points in Louisiana, Texas and Arkansas was compressed at the Munch Compressor Station through use of the equipment situated there; that such compression was essential and necessary to build up sufficient pressure in the line by volume of gas therein to permit constant withdrawals at distant points and the consequent transportation in the interstate commerce described; that the pressure in the line necessarily maintained for such purpose exceeded the rock [fol. 4] pressure of wells from which gas was received and that the product of such wells could not have been delivered into the line nor could they have produced at their natural flow and without the compression described.

## 10

Petitioner shows that the Munce Compressor Station, including lands, buildings and machinery enumerated by petitioner, was assessed for the purpose of ad valorem taxes imposed under the laws of the State during the years 1932 and 1933 at valuations exceeding Eight Hundred Thousand (\$800,000.00) Dollars, and that petitioner has paid all taxes levied against the property described based on such assessments.



## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1937

No. 458

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MILTON COVERDALE, SHERIFF AND EX-OFFICIO  
TAX COLLECTOR, APPELLANT,

vs.

ARKANSAS-LOUISIANA PIPE LINE COMPANY

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF LOUISIANA

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FILED SEPTEMBER 19, 1937.



Petitioner shows that on or prior to August 31st, 1933, it made a return to the Supervisor of Public Accounts in accordance with the purported requirements of Act No. 6 of the legislature of Louisiana for the year 1932, setting forth in detail all information as required by that statute as to the machinery and equipment maintained and operated at its Munce Compressor Station over a period extending from August 1st, 1932, to July 31st, 1933, a copy of which return is attached hereto and made part hereof.

That at the time of such rendition and to avoid a forced sale of the property of petitioner, which, under the said statute of 1932 is provided for without hearing permitted to tax debtor, petitioner paid to the Supervisor of Public Accounts the sum of Three Thousand One Hundred Eighty-four (\$3,184.00) Dollars purported to be imposed under the prime mover or power tax referred to, which was computed as to the equipment at the Munce Compressor Station upon the actual capacity of such machinery multiplied by the number of hours of use.

[fol. 5]

That on July 25th, 1934, Alice Lee Grosjean, Supervisor of Public Accounts, unlawfully demanded of petitioner as due under the provisions of Act No. 6 of 1932 the payment of the additional principal sum of Seven Thousand Three Hundred Sixteen (\$7,316.00) Dollars claimed to be the balance of the prime mover tax due because of the operation of petitioner's engines and machinery at the Munce Compressor Station for the year ending July 31st, 1933, together with a penalty thereon of twenty-five per cent. (25%) (One Thousand Eight Hundred Twenty-nine and No/100 (\$1,829.00) Dollars), or a total of Nine Thousand One Hundred Forty-five and No/100 (\$9,145.00) Dollars, with ten per cent. (10%) upon principal and penalty as attorney's fees, and caused to be recorded in the Mortgage Records of Ouachita Parish on July 24th, 1934, her sworn statement setting forth the details of her demand, which, under the provisions of Act No. 6 of 1932 operates as a mortgage and lien upon all property of petitioner in that parish.

14

That the amounts so demanded were arrived at by the Supervisor of Public Accounts by Calculating the total manufacturer's rated horsepower of the engines owned by complainant at the Munce Compressor Station during such period (Ten Thousand Five Hundred (\$10,500.00) Dollars) at the rate of One (\$1.00) Dollar per horsepower, less the amount paid by petitioner as alleged.

15

That on September 8th, 1934, Milton Coverdale, Sheriff of the Parish of Ouachita, purporting to act pursuant to the provisions of Act No. 6 of 1932 illegally seized the property of petitioner located in the Parish of Ouachita and has advertised the same for sale on October 20th, 1934, [fol. 6] to pay and satisfy the demands unlawfully made by the Supervisor of Public Accounts, hereinabove referred to.

16

Petitioner shows that the amount of the tax claimed and penalties thereon are unlawful and illegally demanded, for the reason that said Act No. 6 of the Legislature of Louisiana for the year 1932 in so far as it purports to levy the tax demanded of petitioner is unconstitutional, illegal and void for the following reasons:

(a) That the statute contravenes Article 1, Sections 8 and 10 of the Constitution of the United States, reserving to the Congress of the United — the sole power to regulate commerce between the several states in that the tax so demanded is a license or privilege tax upon the use of an instrumentality employed by petitioner in interstate commerce without the operation of which it could not so engage in the interstate business described and is a direct burden upon such interstate commerce.

(b) In the alternative, petitioner shows that should the equipment and machinery described not be considered as an essential and necessary instrumentality of the interstate business conducted by petitioner, that it is an essential and necessary instrumentality for the production of gas in the Monroe and Richland fields as described herein, upon which all severance taxes were paid for the period in

question; and that the Legislature was without authority to place any license or privilege tax upon the use of any instrumentality necessary for the production of gas and could not, since such severance taxes are levied in lieu of all other taxes upon the right to produce natural gas, divide such business into several parts and tax any component part thereof contrary to the provisions of Article 10, Sec- [fol. 7] tion 21 of the Constitution of 1921.

(c) In the alternative, that Act No. 6 of 1932 does not purport to levy a license or privilege tax upon any business conducted by petitioner nor is the tax measured by the extent of power generated or produced, but is imposed directly upon the machinery and equipment owned by petitioner according to the character and capacity thereof, upon which it has paid all ad valorem taxes imposed under the laws of the state, is a property tax exceeding the rate provided by Article 10, Section 3 of the Constitution of 1921, constitutes double taxation, and is contrary to the provisions of Article 10, Section 1, of the Constitution of 1921, which requires that all taxes shall be equal and uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax; and that other property of the same character not being subjected to similar taxes, petitioner is denied the equal protection of the laws required by the Fourteenth Amendment to the Federal Constitution.

(d) Further, in the alternative, petitioner shows that if the tax in question be considered as a license or privilege tax, that being based directly upon potential capacity of the machine or engine upon which it is levied and without regard to the use thereof, the tax is not classified, graduated or progressive as required by Article 10, Section 8, of the Constitution of 1921.

(e) That the statute in question denies to petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution in that those who purchase power are subjected to a lesser rate of taxation than imposed upon petitioner, the owner of machinery from [fol. 8] which the power necessary in the conduct of its business is generated.

(f) That the statute in question denies to petitioner and those similarly situated the equal protection of the laws

guaranteed by the Fourteenth Amendment to the Federal Constitution in that it arbitrarily discriminates against petitioner and others similarly situated and in favor of persons and corporations purchasing power in the form of electric energy in the conduct of similar business enterprises by exempting such other persons and corporations from the payment of a tax upon engines owned, maintained and used by them as "stand-by" or emergency facilities, when petitioner and those in similar circumstances having and maintaining such "stand-by" or emergency facilities are granted no exemption therefor.

Petitioner shows that the system and scheme uniformly employed by the Supervisor of Public Accounts in fixing the amount of taxes demanded under the statute in question is to arbitrarily assume the capacity of machinery employed as the original manufacturer's rated horsepower without regard to the obsolescence and depreciation of particular machines; that such scheme and system discriminates against those owning and using machinery having from use thereof a diminished capacity and particularly so discriminates against petitioner with regard to the tax demanded because of the machinery employed at its Munce Compressor Station, denying to it the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution; and the statute in question, granting no opportunity to be heard as to the actual capacity of machinery employed, deprives petitioner of its property without due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution.

Petitioner further shows, and in the alternative, that should the principal amount of the tax demanded be determined to be validly demanded, then that the penalty and attorney's fees demanded are illegal and unwarranted for the reason that petitioner has filed all returns required by law; and the statute in question makes no provision for the employment of an attorney in the enforcement of the collection of the tax sought to be imposed which is accomplished under the statute solely by levy and execution against the property of the tax debtor.



## 19

Petitioner further shows that the penalties and attorney's fees demanded are illegally demanded in that the statute in question grants no opportunity to be heard to any person subject to the tax with regard to the amount thereof to be ultimately assessed and for such reason denies to those against whom the tax is sought to be imposed, and particularly petitioner, the due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution.

## 20

Petitioner shows that the laws of Louisiana provide no remedy under which petitioner might recover the tax illegally demanded of it should such tax be declared invalid; and that unless enjoined and restrained by order of this Honorable Court the said Milton Coverdale, Sheriff and Tax Collector of the Parish of Ouachita, will proceed to advertise and sell the property of petitioner to enforce the collection of the tax illegally demanded.

## 21

That petitioner has heretofore instituted an action against Milton Coverdale, Sheriff of the Parish of Ouachita, and Alice Lee Grosjean, Supervisor of Public Accounts, No. [fol. 10] 23,398 upon the docket of the Fourth Judicial District Court of the state of Louisiana in and for the parish of Ouachita, to enjoin the sale of its property as advertised by the Sheriff of Ouachita Parish, asserting and alleging therein that Act No. 6 of 1932 is unconstitutional and void for the several reasons herein set forth.

## 22

That the jurisdiction of the District Court of Ouachita Parish over the persons of the defendants in the suit referred to was challenged by exception to the jurisdiction and although such exception was overruled, application was made to the Supreme Court of the State of Louisiana for writs of certiorari and prohibition and alternative writs granted by that Court returnable on October 29th, 1934; making it impossible to proceed in said cause until the question of jurisdiction has been determined by the Supreme Court of the State.

That pending the consideration of the question presented by the Supreme Court of the State of Louisiana, Milton Coverdale, Sheriff of the Parish of Ouachita will illegally proceed to sell the property of petitioner to enforce the payment of the tax unlawfully demanded, with the result that your petitioner is denied its right to be heard upon the question of the validity of the tax sought to be collected and deprived of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

That for the reasons alleged a sale of petitioner's property would cause it irreparable injury, whereas, the rights of the state of Louisiana can be protected by adequate bond; that the statute in question under which the tax described is demanded is manifestly illegal and that an injunction should be granted to protect the rights of petitioner, there [fol. 11] being no adequate remedy at law.

Petitioner further shows that the value of the property owned by petitioner situated in the Parish of Ouachita exceeds by many times the amount of the tax with penalties and attorney's fees sought to be collected; that the State can suffer no prejudice by the postponement of the sale complained of; and that petitioner, having no remedy to recover taxes paid by it to prevent said sale, would suffer irreparable injury unless such sale is restrained by order of this Honorable Court; that a temporary restraining order is necessary in the premises.

Wherefore, the annexed affidavits considered, petitioner prays that upon bond being furnished in an amount to be fixed by this Honorable Court a temporary restraining order issue herein upon the ground set forth in the above petition and to prevent irreparable damage to petitioner restraining Milton Coverdale and the deputies of his office from proceeding to sell any property of petitioner situated in the Parish of Ouachita to enforce the payment of taxes with penalties thereon asserted to be due the State of Louisiana under the provisions of Act No. 6 of 1932 for the

period August 1st, 1932, to July 31st, 1933; and that said temporary restraining order be made effective until the hearing of petitioner's application for an interlocutory injunction herein.

Petitioner further prays for a hearing for an interlocutory injunction against the said Milton Coverdale, Sheriff of the Parish Ouachita, in accordance with Section 266 of the Judicial Code of the United States (U. S. C. A. 28 § 380.) and that said Milton Coverdale, Sheriff of the Parish of Ouachita, be ordered to show cause on a day and hour to be fixed by this Honorable Court why an interlocutory injunction should not issue herein enjoining, restraining and prohibiting him and the deputies of his office from proceeding to sell any property of petitioner situated in the Parish of Ouachita to enforce the payment of taxes and penalties alleged to be due the State of Louisiana under the provisions of Act No. 6 of 1932 for the period August 1st, 1932, to July 31st, 1933, and that Gaston Porterie, Attorney General of the State of Louisiana, be notified accordingly.

Petitioner further prays for service and citation hereof upon Milton Coverdale, Sheriff of the Parish of Ouachita, as the law directs, and that after due proceedings Act No. 6 of the Legislature of Louisiana for the year 1932 be declared unconstitutional and the taxes and penalties sought to be collected thereunder illegal and invalid; and that there be judgment in favor of petitioner and against the said Milton Coverdale, perpetuating the interlocutory injunction herein prayed for.

For all orders necessary and general and equitable relief.

Leon O'Quin, Blanchard, Goldstein, Walker & O'Quin.

[File endorsement omitted.]

[fol. 13] *Duly sworn to by W. H. Buckley and Leon O'Quin. Jurat, omitted in printing.*



[fol. 14]

[File endorsement omitted]

## IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR TEMPORARY RESTRAINING ORDER, ETC.—Filed  
October 15, 1934

Whereas, in the above cause it is made to appear upon the bill of complaint that a writ of injunction preliminary to the final hearing is proper and that prima facie the complainant is entitled thereto, enjoining the defendant from the acts complained of and about to be committed;

It is therefore ordered that the defendant Milton Coverdale, Sheriff of the Parish of Ouachita, appear before the Judge of this District Court of the United States for the Western District of Louisiana and a judge of the Circuit Court of the United States and another district judge of the United States Court sitting to hear this matter on the 25th day of October, 1934, at 10:00 A. M., at the court room of United States District Court at New Orleans, Louisiana, and then and there show cause, if any he has, why the preliminary injunction prayed for in such bill of complaint should not issue; and it appearing that there is danger of irreparable damage being caused to the complainant before the hearing of said application for the preliminary writ of injunction can be had unless the defendant is, pending such hearing, restrained as hereinafter set forth; therefore, complainants application for a restraining order is granted upon its giving bond with good and sufficient surety to be approved by the Clerk of this Court in the penal sum of ten thousand and no/100 (\$10,000.00) Dollars, securing the said defendant against all loss or damage which may result from the issuance of said order if it should be finally determined that the same was improperly issued or that it [fol. 15] may award to him by reason of the granting of said order.

Now, therefore, it is ordered that Milton Coverdale, Sheriff of the Parish of Ouachita, and the deputies of his office be and they are hereby specially restrained and enjoined until further order of this Court from proceeding to sell any property of the Arkansas-Louisiana Pipeline Company situated in the Parish of Ouachita to enforce the pay-



ment of taxes asserted to be due the State of Louisiana under the provisions of Act No. 6 of the Legislature of that state for the year 1932 for the period August 1st, 1932, to July 31st, 1933, with penalties alleged to be due thereon.

It is further ordered that a copy of this order properly certified by the Clerk of the Court be served on Milton Coverdale, and that Gaston Porterie, Attorney General of the State of Louisiana, be notified of the hearing herein on the application for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States as amended.

Shreveport, Louisiana, this 15th day of October, 1934.

Ben C. Dawkins, Judge of the United States District Court in and for the Western District of Louisiana.

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE—  
Filed October 20, 1934

To Milton Coverdale, Sheriff of the Parish of Ouachita, Louisiana, a citizen and resident of the Parish of Ouachita within the Western District of Louisiana, Greeting:

By virtue of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order and the application therefor, each duly certified under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, and each of you, your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially Restrained, Enjoined, and Prohibited from proceeding to sell any property of Arkansas-Louisiana Pipeline Company situated in the Parish of Ouachita to enforce the payment of taxes with penalties thereon asserted to be due the State of Louisiana under the provisions of Act No. 6 of 1932 for the period August 1st, 1932, to July 31st, 1933, until the further orders of this Court; and,

You, and each of you, are hereby Commanded to Show Cause, if any you have or can, before said Court, at the City of New Orleans, Louisiana, at 10 o'clock A. M. on the 25th day of October, 192-, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Judge of the United States District Court for the Western District of Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 15th day of October, 1934, and the 159th year of American Independence.

E. C. Jackson, Clerk, by Mina E. Holt, Deputy Clerk.  
(Seal.)

U. S. Marshal's Return

Marshal's Docket 4237

Date: Oct. 15, 1934.

Received Shreveport, La. Oct. 16, 1934. Executed Oct. 16, 1934, Monroe, La., by delivering certified copy of this Writ, together with certified copy of Bill of Complaint and Order to within named Milton Coverdale, Sheriff of Ouachita Parish, La., by handing same to C. D. Meredith, Chief Deputy Sheriff in the office of Milton Coverdale, Sheriff, said Sheriff being temporarily absent from office at time of service.

George W. Montgomery, U. S. Marshal, by W. C. Ivey, Deputy.

Service \$2.00.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING RESTRAINING ORDER IN EFFECT—Filed  
October 23, 1934

The application for a preliminary injunction herein having been refused to be heard in the court room of the United

States District Court at New Orleans, Louisiana, on Friday, November 23rd, 1934, and it appearing that the postponement of such hearing will cause irreparable damage to plaintiff herein in the event that the temporary restraining order heretofore granted is not extended and an application having been made therefor;

It is Therefore Ordered, that the temporary restraining order heretofore issued be and the same is hereby extended to be in full force and effect as originally issued until the hearing on the application for preliminary injunction which has been set for November 23rd, 1934, at New Orleans, Louisiana.

It is Further Ordered that the defendant herein be notified of this order.

Done and Signed at Shreveport, Louisiana, on this the 23rd day of October, 1934.

Ben C. Dawkins, United States District Judge.

[File endorsement omitted.]

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[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION OF COURT—Filed April 15, 1935

DAWKINS, J.:

In this case, identical provisions of the Act, No. 6, of the Louisiana Legislature for the year 1932, are attacked as unconstitutional for the same reasons urged in the case of Union Sulphur Company vs. Reid, Sheriff and Tax Collector, et al., No. 618 in equity, this day decided, and on the additional ground that they impose an undue burden upon interstate commerce. Defendant has filed an exception of non-joinder, in that the Supervisor of Public Accounts was a necessary and indispensable party defendant; and otherwise opposed the granting of the preliminary injunction upon the same grounds.

Decisions of the state court have repeatedly held that the validity of a tax may be contested against the sheriff and tax collector alone where he was proceeding to sell property [fol. 19] in execution of a tax lien. K. C. S. Railway Co. vs.



Skinner, 145 La. 25, 81 So. 743; L. & A. Ry. Co. vs. Tax Collector, 121 La. 997, 46 So., 994; Board of Trustees of Centenary College vs. Sheriff, 128 La., 257, 54 So., 790; Bud vs. Houston, 36 An. 959; see also U. S. vs. Lee, 106 U. S., 196.

The plaintiff in this case, like the Union Sulphur Company in No. 618, failed or refused to make a return, and the Supervisor determined the tax to be \$7316.00 for the period ending July 31, 1933, added thereto 25% penalties under the statute and 10% attorney's fees, recorded a statement thereof as provided by the statute and had the sheriff seize and advertise the property of defendant for sale. The latter then filed suit in the state court, seeking to enjoin the sheriff and Supervisor of Public Accounts from selling its property, alleged to be worth \$800,000, upon substantially the same grounds as urged here. The latter excepted to the jurisdiction of the district court for Ouachita Parish, on the ground that she should have been sued in the Parish of East Baton Rouge, her official domicile, and the place where she discharges her duties. The exception to the jurisdiction was overruled by the trial court and the Supervisor applied to the State Supreme Court for a writ of prohibition, which was granted, with a stay order and the trial judge was ordered to send the record up. This had the effect of releasing the sheriff and Supervisor from the effects of the restraining order granted by the lower court and they proceeded again with the advertisement of the property for sale; whereupon the plaintiff sought relief in this court in the present action. Upon the hearing by the Supreme Court of its supervisory writ thus granted, the stay order was recalled (after the present suit had been filed) and in passing upon the [fol. 20] plea as to the jurisdiction, the court has this to say:

"The ruling of that court in maintaining its jurisdiction is sanctioned by reason and supported by precedent. Plaintiff is engaged in business in the Parish of Ouachita and its property is there. The lien is recorded there and there it has effect against the property of the alleged debtor, and it is there that an attempt is being made to enforce it. The method set up by the act to enforce payment of the tax is the seizure and sale of the property of the tax debtor, and if a sale is made, it must be made where the property is situated. In sum, the enforcement or execution of the lien which came into existence by virtue of the recorded sworn statement made by the Supervisor of Public Accounts



must take place in the Parish of Ouachita, where the property is situated.

It is alleged, and not denied, that if the sheriff of Ouachita Parish is not restrained by the Court, he will sell Plaintiff's property, and it is alleged that a sale of plaintiff's property under this process will result in irreparable injury to it. It is manifest that plaintiff's only remedy was to enjoin the executing officer, the sheriff, from making the sale. The real object of the suit, therefore, was to obtain the injunction and the issue as to the validity of tax was raised by the injunction."

It then proceeded to cite and analyze numerous decisions, sustaining the jurisdiction of the lower court where the property was situated, and finally concluded:

"The reason for the rule is that when property is seized and about to be sold under process of this kind, the alleged debtor must arrest the sale in order to obtain relief, for if he allows his property to be sold and the tax collected, he has no remedy under the act to recover the amount, even if the tax should be held to be illegal. The suit for injunction is, therefore, the main demand and the invalidity of the tax is plead as a ground for the injunction. The court of East Baton Rouge Parish, where the Supervisor has her official domicile, would have no jurisdiction to arrest a sale about to take place in Ouachita.

If the sole purpose of the suit had been to reduce the assessment made by the Supervisor, or to correct it, the court at her domicile would have had jurisdiction, because she made the assessment there, and, if a change should be made, she would have to make it there, and the suit should be brought where she performs her official functions. *N. O. G. N. R. Co. vs. Thomas, Assessor, et als., supra.*

But in this case, the Supervisor did more than make the assessment; she caused it to be filed and recorded in the Parish of Ouachita, where the property affected is situated, and caused the sheriff to seize and advertise it for sale."  
[fol. 21] We find the facts as follows:

Plaintiff is engaged in the transporting of natural gas purchased in this state from producers, and 96.6% of which is carried by pipe line into and sold in the states of Texas and Arkansas. The engines or "prime movers" are used in compressor stations for pumping said gas through its

lines. Having failed to make a return, the Supervisor determined the amount of the tax to be \$7,316.00, added thereto the penalty of 25%, as well as 10% attorney's fees on the whole, recorded a statement thereof in the mortgage records and caused the sheriff and tax collector to seize and advertise for sale property valued at several hundred thousand dollars, in satisfaction thereof. Thereupon this suit was filed and a restraining order granted under the circumstances above set out.

The defenses are substantially the same as in the case of Union Sulphur Company against Reid, Sheriff and Tax Collector, No. 618, this day decided.

### Conclusions of Law

We are of the view that the tax is invalid for the reasons given in the opinion in the Union Sulphur Company case, and also because it imposes an undue burden upon interstate commerce. The engines driving the pressure pumps which force the gas through the lines into other states are just as much instruments of interstate commerce as are the locomotives of an interstate railroad or the motive power of a ferry-boat operating across a river separating two states. So that even if the tax could be held a license tax it could not be sustained as to the business in which plaintiff is engaged. *Helson vs. Kentucky* 279 U. S., 245; [fol. 22] *Sprout vs. South Bend*, 277 U. S., 163; *Glouster Ferry Co. vs. Pennsylvania*, 114 U. S., 196; *Pickard vs. Pullman Car Company*, 117 U. S., 34; see also *State Tax Commission vs. Interstate Natural Gas Company*, 284 U. S., 41; *Pennsylvania vs. West Virginia*, 260 U. S. 553; *West vs. Kansas Natural Gas Company*, 221 U. S., 229; *Pennsylvania Gas Company vs. Public Service Commission*, 252 U. S. 23.

For the reasons assigned, the preliminary injunction will be granted:

Rufus E. Foster, U. S. Circuit Judge. Ben C. Dawkins, U. S. District Judge. Wayne G. Borah, U. S. District Judge.

[File endorsement omitted.]

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR REHEARING AND NEW TRIAL—Filed April 26, 1935

To the Honorable the Judges of Said Court:

Now into Court, through undersigned counsel, comes Milton Coverdale, Sheriff and Ex-Officio State Tax Collector, made respondent in the above styled and numbered cause, and moves that a rehearing and new trial of this cause be granted and that the interlocutory decree entered, and preliminary injunction granted, herein on April 15, 1935, be recalled, vacated and set aside for the following reasons, to-wit:

1

The Court is in error in holding or maintaining that the tax levied by Act 6 of the Regular Session of the Louisiana Legislature of 1932 is a property tax.

2

The Court is in error in not holding or maintaining that the tax levied by said Act is an excise, license or privilege tax.

[fol. 24]

3

The Court is in error in holding or maintaining that said Act violates the due process clause of the Fourteenth Amendment to the Federal Constitution, in that it makes no provision for a hearing or review of the action of the Supervisor of Public Accounts in determining the tax.

4

The Court is in error in holding or maintaining that the tax levied by said Act being unconstitutional because it imposes an undue burden upon interstate commerce under the facts of this case.

Your respondent further shows that in connection with this application for a rehearing and new trial, a brief in support thereof will be filed within the time limit fixed by



this Honorable Court, and that, for the reasons hereinabove set forth, and amplified in the brief, a rehearing and new trial should be granted, and, finally the interlocutory decree and preliminary injunction granted herein should be recalled, vacated and set aside.

The premises considered, respondent prays that, after due consideration, a rehearing and new trial be granted in this cause, and that, finally, the interlocutory judgment and [fol. 25] preliminary injunction granted herein be recalled, vacated and set aside and for general and equitable relief.

Gaston L. Porterie, Attorney General of the State of Louisiana. Justin C. Daspit, Special Assistant to Attorney General. F. A. Blanche, Special Assistant to Attorney General. E. L. Richardson (by J. C. D.). A. L. Davenport (by J. C. D.), Attorney for Sheriff and Ex-Officio Tax Collector of Ouachita Parish. J. B. Dawkins (by J. C. D.), of Counsel.

[fol. 26] *Duly sworn to by Justin C. Daspit. Jurat omitted in printing.*

[File endorsement omitted.]

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[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION OF COURT GRANTING NEW TRIAL—Filed July 26,  
1935

DAWKINS, D. J.:

After due consideration of the motion for a new trial in the above numbered and entitled cause, and in view of the decision of the Supreme Court of the State of Louisiana, in the case of State ex rel. Gaston L. Porterie, et al. vs. H. L. Hunt, Inc., No. 33450 on the docket of said court, involving similar issues, it is the opinion of this court that said motion should be granted and it is accordingly so ordered.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins,  
District Judge. Wayne G. Borah, District Judge.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION OF COURT ON NEW TRIAL—Filed February 4, 1936

Before Hutcheson, Circuit Judge, and Dawkins and Borah,  
District Judges

DAWKINS, District Judge:

A rehearing was also granted in this case because of the decision of the Supreme Court of the State in *State Ex Rel Porterie, et al. vs. H. L. Hunt, Inc.*, 182 La. 1073, 162 So. 777, holding the tax in question to be a license rather than a property tax. We are bound by that conclusion. (*Dawson vs. Kentucky Distilleries*, 255 U. S., 296). However, this still leaves in this case the question as to whether, as a license tax, it imposes an undue burden on interstate commerce. [fol. 29] That natural gas, as well as crude oil, are commodities, which under proper circumstances become a part of such commerce, hardly needs the citation of authority. See *West vs. Kansas Natural Gas Company*, 221 U. S., 229; *Pennsylvania Gas Co. vs. Public Service Commission*, 252 U. S., 23; *Pennsylvania vs. West Virginia*, 262 U. S., 553. As stated in our former opinion, the plaintiff purchases its gas from producers in the Monroe and Richland fields, which passes through gathering systems to its pumping station at Munce, whence it is transported by the pressure of the pumps or machinery whose horse power is the subject of this license tax, to other states. From the moment of its acquisition through the meters in the field into the gathering lines, 96.6% of its volume starts on its journey by way of the pumping station and the twenty inch main into other states. The pumps or compressors are instrumentalities used to effectuate or accomplish that journey,—in fact, without them transportation of the gas in required quantities when the rock pressure is low, could not be made, since it is a substance which cannot be handled like crude oil, grain, etc. These engines, therefore, become the real and only motive power for its movement in interstate commerce. It is argued that the tax is laid upon the business of using or in business which uses power-producing engines rather than upon the machinery itself and that contention was sustained by the State court to distinguish it from a prop-

erty tax. Having thus determined it to be a li-ence tax upon a business or occupation, then it would seem clear that the business of this defendant cannot be carved into separate parts and a tax imposed upon one of those parts without affecting the other. It is a single entity, to-wit, the business of purchasing gas in one state and selling it in another, and [fol. 30] in order to do so, plaintiff must use this machinery as a means of transportation.

Much reliance is placed upon the case of Utah Power & Light Company vs. Pfof, 286 U. S., 165. However, the Supreme Court there found there was a distinction between the two operations of the defendant company, to-wit, the manufacturing and transporting and sale of electrical power. The tax was levied upon the manufacturing. The plaintiff had a plant whose turbines were turned by water power, and which in turn converted that power into electrical energy before it was possible to transport it out of the state. The first operation, the court said, was manufacturing, subject to local regulation and state control, notwithstanding, the energy after production, was transmitted instantaneously over wires to other states. There is no such condition in the present case, as the gas is gathered and transported in its original state, just as a freight train might pick up carloads of cotton at stations on a railroad line and carry them into other states; and if this tax can be imposed according to the number of horse power of the engines, there could be no rational reason why it could not likewise be done on the basis of number of feet or miles of pipe used. In State Tax Commission of Mississippi vs. Interstate Natural Gas Company, 284 U. S., 41, the state had imposed a license or privilege tax "upon each person engaged or continuing in the business of operating a pipe line or transporting in or through the state oil or natural gas, through pipes." The tax was measured and graded according to the number of miles and size of pipe so used. The gas was purchased from producers in Louisiana and transported and sold in Mississippi. The gas company sold to consumers in Louisiana from 70 to 75 millions cubic feet per day and to those in Mississippi from 204 million to 520 million feet per day, and in holding the tax unconstitutional, the Supreme Court, in part, had this to say:

"The gas flows continuously from the gas fields in Louisiana and obviously for much the greater part at



least, in interstate commerce. But the appellees rely upon business done under two similar contracts made in New York, to show that there was intra-state commerce in Mississippi that may be taxed without burdening the main activity that the State cannot touch. . . . Distributing companies tap the plaintiff's pipe near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured by a thermometer and a meter furnished by the plaintiff, which is the only way in which it can be measured. The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over than to make it ready for delivery to the independent parties, who dispose of it by retail."

The judgment of the lower court holding the tax illegal as imposing an undue burden upon interstate commerce was affirmed. If a license tax, measured by the number of miles and size of the pipe used, constituted a burden upon the interstate commerce of transporting and selling the gas, how can it be said that a similar license tax, determined by the horse power of the engines used in propelling it through such pipes, is not likewise a burden upon such commerce? We are unable to see any distinction.

Another case which appears clearly applicable in principle, is that of *Cooney vs. Mountain States T. & T. Co.*, 294 U. S. 384. There the State of Montana imposed a license or occupation tax upon everyone "engaged in the business of operating or maintaining telephone lines and furnishing telephone service in the State . . . for each telephone instrument used, controlled and operated by it in the conduct of such business, based upon the number of telephone instruments owned, controlled and operated by it during [fol. 32] all or any part of the calendar year", beginning at ten cents per instrument and increasing according to the number so used, up to one dollar. The tax was assailed as imposing a burden on the interstate business of the plaintiff. Plaintiff owned 34,000 telephones and of these "more than 10,000 have actually been used in interstate and for-

eign commerce . . . ; plaintiff pays the usual property taxes in Montana and also the corporation license or occupation taxes, which are a percentage of its intra-state revenues . . . . It was contended the tax was imposed solely upon intra-state commerce and that it did not burden interstate commerce. However, the court found that the manner in which the tax was imposed, based upon the number of instruments, a large proportion of which were used in interstate commerce, necessarily caused it to operate upon an instrumentality used in interstate commerce; and since no means were provided in the law for separating the two kinds of business, that is intra and interstate, it would have to be held invalid as a whole, when applied to the business of the plaintiff. Here again we can see no distinction between a license tax based upon the number of telephones used, regardless of the frequency thereof, or revenue produced, and a similar tax gauged according to the horse power of engines likewise used for propelling natural gas through an interstate pipeline. There the telephones were used in the interstate commerce of communication; whereas, here, the engines are employed in the interstate transportation of natural gas to consumers in other states.

Our conclusion is that the tax assailed in the present case imposes an undue burden upon interstate commerce and is, therefore, invalid as to this complainant. A preliminary writ of injunction should issue.

Proper decree should be presented.

[fol. 33]

#### DISSENTING OPINION

HUTCHESON, Circuit Judge, dissenting:

The primary purpose of the statute appears to have been to impose a license tax upon the production of power. It thus imposed not a property, but an excise or privilege tax. *Union Sulphur Co. vs. Reid*, this day decided. *State ex rel Porterie vs. Hunt*, 62 So. 777; *Bromley vs. McCaughan*, 290 U. S. 124.

The majority concludes that because the tax is a privilege, and not a property tax, and falls on the generation by complainant of power, used in part to gather gas in to, and

in part to transport it through its transportation lines, it is a direct, an undue burden on interstate commerce. I do not think so.

The majority considers the tax a license tax upon the business or occupation of transporting gas in interstate commerce; that is, the business of purchasing gas in one state and selling it in another. I do not think so. If I could agree that the tax was occupational, levied on the general business of complainant, that of acquiring and conducting gas interstate, I could agree with the majority that the case is ruled by *Cooney vs. Mountain States T. & T. Co.*, 294 U. S. 384, and that the tax is invalid. I cannot, however, agree to this. I think it quite plain that the tax is not imposed on complainant as a license tax, for the general privilege of transacting its business. It is exacted as a specific privilege tax, for the privilege of generating power in the State. It does not at all fall upon or condition its privilege of conducting the business of transporting gas interstate.

In the *Cooney* case this distinction is made clear. There is said "There is no question that the State may require payment of the occupation tax from one engaged in both intrastate and interstate commerce." c/f *East Ohio Gas Co. vs. Tax Commission*, 283 U. S. 465, "But a State cannot tax interstate commerce; it cannot lay a tax upon the [fol. 34] business which constitutes such commerce, or the privilege of engaging in it."

The statute under attack here does not undertake to, it does not, lay a tax upon the business which constitutes interstate commerce, or the privilege of engaging in it. It exacts of complainant, who is engaged in both intra and interstate commerce, as well as of all others in the State of Louisiana similarly situated as to the use of prime movers, a privilege tax upon the generation of power in Louisiana. The uses of that power are not taxed. The business in which the power is generated is not taxed. The generation of the power, and that alone, is taxed. The measure of it, is the horse power capacity of the "prime movers" employed to generate it.

The majority regards as inapplicable *Utah Power & Light Co. vs. Pfoest*, 286 U. S. 165. I think that case controlling. There the generation of electrical energy which was the subject of the tax was followed immediately by its



transmission to other states. Here, as there, the tax is upon the production of energy. Here, as there, that production is taxable, for here, as there, the tax is laid on the manufacture or production of energy, and not on its transfer or conveyance to distant states. Here, as there, the tax is laid upon the generation of power as a distinct act of production, and without regard to its subsequent use. Here, as there, so far as complainant produces energy in Louisiana, its business is purely intrastate, subject to State taxation and control. It is only in transmitting as across the State lines by the use of this power that defendant is engaged in interstate commerce.

Other cases supporting this view are, *Oliver-Iron Mining Co. vs. Lord*, 262 U. S. 172; *Hope Natural Gas Co. vs. Hall*, [fol. 35] 274 U. S. 284; *Coe vs. Errol*, 116 U. S. 517; *c/f Federal Compress Warehouse Co. vs. McLean*, 291 U. S. 17; *Carson Petroleum Co. vs. Vial*, 279 U. S. 95; *Schechter Poultry Corp. vs. United States*, 295 U. S. 495.

I am also of the opinion that defendant is right in its contention that if the tax may be held to be on interstate commerce, it falls on it not directly, but indirectly and therefore does not violate the Commerce Clause. *Port Richmond vs. Board of Chosen Freeholders*, 232 U. S. 317; *Wiggins Ferry Co. vs. East St. Louis*, 170 U. S. 365; *State vs. Albert Mackie*, 144 La. 339; *Krauss Lumber Co. vs. Board of Assessors*, 148 La. 1057; *Baltic Mining Co. vs. Massachusetts*, 231 U. S. 68; *Hump Hairpin Mfg. Co. vs. Emerson*, 258 U. S. 290.

When a tax is as here levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that "it is clear that it is not imposed with the covert purpose, or with the effect to defeat constitutional rights", *Hump Hairpin Mfg. Co. vs. Emerson*, *supra*, it is not a prohibited burden on interstate commerce. It is a valid exercise of the power of the State to tax.

With respect, therefore, I dissent.

[File endorsement omitted.]

[fol. 36] UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH  
JUDICIAL CIRCUIT

Joseph C. Hutcheson, Jr., U. S. Circuit Judge, New  
Orleans, La.

February 17, 1936.

Hon. Wayne G. Borah, United States District Judge, New  
Orleans, La.

DEAR JUDGE BORAH :

I am returning the decree in #615. I first signed it, but on reflection, I do not think I should dissent from the decree. In fact, I do not believe I can. The decree ought to follow the majority opinion, and I understand that my dissent from the opinion is sufficient, so I first signed it and then scratched out my signature.

I really do not believe it is necessary for the decree to be signed at all. It is not in our practice in Texas, and that may be why I am not able to say what is right in this case. At any rate, I have decided to leave my signature off altogether.

Sincerely yours, J. C. Hutcheson, Jr.

[fol. 37] IN UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF LOUISIANA

[Title omitted]

ORDER GRANTING AN INTERLOCUTORY INJUNCTION—Filed  
February 21, 1936

This cause having been heard at New Orleans, Louisiana on December 7th, 1935, before a statutory three judge court convened by the Honorable Ben C. Dawkins, United States District Judge for the Western District of Louisiana, by calling to his assistance the Honorable Joseph C. Hutcheson, Justice of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana, pursuant to Section 266 of the Judicial Code upon the application of Arkansas Louisiana Pipeline Company, plaintiff in the above entitled cause, for an interlocutory in-

junction, pursuant to its bill of complaint praying for an interlocutory and final decree enjoining and restraining the enforcement of Act No. 6 of the regular session of the Legislature of Louisiana for the year 1932, by enjoining the defendant, Milton Coverdale, Sheriff and Tax Collector of the Parish of Ouachita, State of Louisiana, from proceeding to sell property of plaintiff to enforce the collection of taxes imposed by said statute on the ground that the statute violates the Constitution of the United States in that the tax imposed thereby constitutes an undue burden upon interstate commerce, such hearing being further pursuant to an order granting a rehearing of an order directing the issuance of an interlocutory injunction by a statutory three judge court convened at New Orleans, Louisiana on November 23rd, 1934, after statutory notice thereof, and counsel having been heard as to the issues presented,

[fol. 38] It is Ordered, Adjudged and Decreed by said three judge court that an interlocutory injunction issue as prayed for enjoining and restraining the defendant, Milton Coverdale, Sheriff and Tax Collector of the Parish of Ouachita, State of Louisiana, his deputies and agents from proceeding to sell the property of plaintiff, or any portion thereof, situated in the Parish of Ouachita to enforce the payment of taxes with penalties thereon asserted to be due the State of Louisiana for the period August 1st, 1932 to July 31st, 1933, under the provisions of Act No. 6 of the regular session of the Legislature of Louisiana for the year 1932.

It is Further Ordered that plaintiff forthwith give a penal bond in the sum of Ten Thousand Dollars, and that said temporary injunction remain in full force and effect until final hearing of this cause and until the further order of this Court.

This — day of February, 1936.

Ben C. Dawkins, United States District Judge for  
the Western District of Louisiana. Wayne G.  
Borah, United States District Judge for the East-  
ern District of Louisiana.

Approved as to form:

E. L. Richardson, Attorney for Defendant Sheriff  
and Tax Collector.

[File endorsement omitted.]



[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO MERITS—Filed January 5, 1937

Now into Court comes Milton Coverdale, Sheriff and Ex-Officio Tax Collector for the Parish of Ouachita, made defendant in the above styled and numbered cause, and without waiving but specially reserving all rights under exceptions and motions heretofore filed, and for answer to the allegations contained in complainant's bill, denies each and every allegation therein contained, except those specifically admitted, and further answering avers:

1

The allegations of this paragraph are admitted.

2

The allegations of this paragraph are admitted.

3

Respondent admits that complainant is engaged in the business of producing, buying, transporting and selling natural gas, and that it owns and maintains systems of pipelines in the State of Louisiana, including a Twenty Inch (20") interstate line extending from Sterlington, Ouachita Parish, Louisiana, westward through the State of [fol. 40] Louisiana. Respondent is without knowledge or specific information as to the allegations pertaining to such business in Arkansas and Texas, and hence denies the remaining allegations of this paragraph. Further, respondent shows that complainant is engaged in Louisiana in both inter and intra-state business, selling from said Twenty Inch (20") main, described herein, gas in Louisiana. Respondent further shows that complainant owns and operates, in its intra-state business in Louisiana a field gathering system consisting of small feeder lines running out to the gas wells in the Richland and Ouachita Gas fields, and that it is through the aid of these small feeder lines, which make up a network of lines in said gas fields, that the gas is gathered from the fields where it is produced and brought to a central point for delivery into the Twenty

Inch (20") main pipeline at Sterlington, Ouachita Parish, Louisiana; that this system of feeder lines, or as commonly called, the field gathering system, is necessary to gather up the gas from the premises and from the fields where it is produced, in order that it may be placed in either inter or intra-state commerce; that it is necessary to have these feeder lines, or this field gathering system in order to gather the gas from the properties where it is produced, or severed from the soil, and to bring it out to a central point where it can be utilized; that this is essential whether the gas is to be used within the State of Louisiana or is to be later transported in interstate commerce. Respondent further shows that the gas transported out of the State of Louisiana by complainant does not enter interstate commerce until it is actually and physically within the Twenty Inch (20") main, one terminus of which is at Sterlington, Ouachita Parish, Louisiana.

[fol. 41]

4

Respondent admits that from August 1, 1932, until July 31, 1933, the natural gas transported through the pipelines described, that is, through the Twenty Inch (20") main, one terminus of which is at Sterlington, Louisiana, was in part produced by complainant from leases owned and operated by it in the Monroe and Richland fields in Louisiana, and in part purchased from other producers of gas in those fields. Respondent further shows that transportation of gas through said Twenty Inch (20") main took place only after the gas was collected from the properties where produced through the system of small feeder or gathering lines, and delivered into the Twenty Inch (20") main at Sterlington. For want of sufficient information on which to base a belief, respondent denies that all severance taxes due the State of Louisiana by complainant and others than complainant, as alleged in this paragraph, have been paid on the said natural gas.

5

Respondent admits that gas, after being delivered physically within the Twenty Inch (20") pipeline, one terminus of which is at Sterlington, Louisiana, that is destined for points outside of the State of Louisiana, is in interstate commerce. For lack of sufficient information on which to

base a belief respondent denies the other allegations contained in paragraph Five of complainant's bill.

## 6

Respondent admits that complainant owns and operates a mechanical unit or units at the Munce Station at Sterlington, Ouachita Parish, Louisiana, known as a compressor or compressors; respondent further admits that these mechanical units known as compressors are necessary in the production of gas in the Richland and Ouachita Parish fields, and that it is necessary to have these compressors in order to load the gas into the Twenty Inch [fol. 42] (20") interstate main, one terminus of which is at Sterlington, Louisiana; respondent further admits that the wells furnishing gas to complainant in the Richland and Ouachita fields cannot produce at their natural flow, therefore, the compressor is necessary in order to draw the gas from the wells, where the wells have low rock pressure, and is also necessary to load the gas into the Twenty Inch (20") interstate main, through the meter which measures said gas at the point of intake into said Twenty Inch (20") interstate main; respondent further shows that the work done by said compressors in enabling the gas wells involved to produce, and the use of said compressors in loading the gas into the Twenty Inch (20") interstate main, is strictly intra-state business and is not interstate business. Respondent further shows that at the Munce Station, referred to herein, there are located devices which are used to extract from the gas, that has been gathered by the field gathering system, water and other foreign substances which changes the product from unmerchantable gas to merchantable gas. The respondent denies all other allegations contained in paragraph Six of complainant's bill.

## 7

Respondent admits that the station owned by complainant at Sterlington, Louisiana, is commonly referred to as the "Munce Compressor Station," and consists mechanically of a number of mechanical units some of which are commonly known as compressors. Respondent further admits that it requires mechanical energy to operate the mechanical units known as compressors; respondent shows that said mechanical energy may be obtained by the use of



internal combustion gas engine units, such as used by complainant in the case at bar, by the use of electric motors, or by the use of steam engines; that complainant has elected to manufacture and generate mechanical power at the Munce Station by the use of ten (10) four cylinder Cooper [fol. 42½] Bessemer Internal Combustion engines, in all of which natural gas is used as fuel; respondent further shows that the mechanical energy or power generated and manufactured by said ten (10) four cylinder Cooper Bessemer Internal Combustion engines is transmitted to the mechanical units commonly called compressors; respondent further shows that said mechanical units known as compressors can be operated, and are commonly operated by electricity or other forms of power, or energy; respondent further shows that the mechanical units known as compressors are bolted down to concrete, and are stationary at the Munce Station, and have their situs there at all times. Respondent further shows that the ten (10) four cylinder Cooper Bessemer Internal Combustion engines which are used by complainant herein, are commonly known as "Prime Movers" and are bolted down to cement and are permanently situated at the Munce Station; respondent further shows that there are two mechanical units situated at the Munce Station, one the compressor, and the other, the internal combustion engine, or Prime Mover, which Prime Mover is used exclusively in the manufacture of power which is transmitted to the compressor and which power, after it is manufactured and created by the Prime Mover, operates the compressor. Respondent further shows that the manufacture or generation of the power by the Prime Movers, referred to herein, is strictly intra-state business and business done within the State of Louisiana. Respondent admits that in addition to the equipment aforementioned, there is situated at the Munce Station, on land owned by petitioner, two (2) electric generators propelled by gas burning Internal Combustion engines which are used to manufacture electrical energy for lighting the buildings at the compressor station and operating the machine shop and air compressor. All other allegations contained in paragraph Seven are denied.

[fol. 43]

8

Respondent especially denies that four engines and one generator are made necessary for the purpose of being

used as "stand-by." Further answering, respondent avers that the report of complainant made to the office of the Supervisor of Public Accounts shows that all of the equipment at said plant was used in the conduct of its business, and that none of the equipment was used or claimed to be used as "stand-by." Further answering, respondent shows that if the engines employed in the operation of said plant "seldom function at their maximum capacity," as alleged this is the fault of complainant for not keeping the said engines in proper repair.

## 9

Respondent admits that from August 1, 1932 to July 1, 1933 that all gas delivered into complainant's Twenty Inch (20") line, herein described, at Sterlington, was delivered into said line by the compressors at the Munce Station. Respondent further shows, for lack of specific information, all of the remaining allegations in this paragraph are denied.

## 10

Respondent is without knowledge or specific information as to the allegations contained in paragraph Ten and, therefore, denies the same. Respondent further shows that the allegations contained in paragraph Ten are irrelevant and immaterial and have no bearing on the issues involved in the case at bar.

## 11

Respondent admits that complainant, prior to August 31, 1933, made a return to the Supervisor of Public Accounts under Act No. 6 of 1932, but respondent denies that said return fully complied with the provisions of said Act No. 6 of 1932.

## 12

Respondent admits that complainant paid the sum of Three Thousand, one Hundred and Eighty-four Dollars [fol. 44] (\$3,184.00) under the provisions of Act No. 6 of 1932, but respondent specially denies that the amount paid was the entire amount due for the fiscal year ending July 31, 1933, and respondent denies that the calculation as made is correct or that it is in compliance with the law, and further denies that said payment was made "to avoid a forced sale," as alleged, since the amount paid was not

the entire amount due the State under the provisions of Act 6 of 1932. Further answering respondent shows that said payment was made under the provisions of Act No. 6 of 1932, which complainant now contends is invalid. All other allegations of this paragraph are denied.

## 13

Respondent admits that on July 25, 1934, Alice Lee Grosjean, Supervisor of Public Accounts, demanded of petitioner, as due under the provisions of Act No. 6 of 1932, the payment of the additional principal sum of Seven Thousand Three Hundred Sixteen Dollars (\$7,316.00) due as the balance of the excise, license or privilege tax levied by Act No. 6 of 1932, for the privilege of generating and manufacturing power by the use of Prime Movers consisting of Internal Combustion engines operated at the Munce Compressor Station for the year ending July 31, 1933, together with the penalty thereon of Twenty-five Per cent (25%), One Thousand Eight Hundred Twenty-nine Dollars (\$1,829.00), or a total of Nine Thousand One Hundred Forty-five Dollars (\$9,145.00) with Ten Percent (10%) upon the principal and penalty as attorney's fees, and caused to be recorded in the mortgage records of Ouachita Parish, on July 24, 1934, her sworn statement setting forth the details of her demand, which, under the provisions of Act No. 6 of 1932, operates as a mortgage and lien upon all property of petitioner in that Parish. Respondent denies that the demand made by the Supervisor of Public Accounts was unlawful, and denies all other allegations contained in paragraph Thirteen of complainant's bill.

[fol. 45]

## 14

Respondent admits that the amounts so determined by the Supervisor of Public Accounts were calculated according to the total manufacturer's rated horsepower of Prime Movers or engines owned by complainant at the Munce Compressor Station during such period, and used by complainant in the generation or manufacture of power which was transmitted and used after its manufacture and generation to operate the compressors referred to in this answer. Respondent further shows that the measure or rate of tax levied by said Act No. 6 of 1932, Section 3, was at the rate of One Dollar (\$1.00) per horsepower capacity.



Respondent admits that on September 8, 1934, Milton Coverdale, Sheriff and Ex-Officio Tax Collector of Ouachita Parish, acted pursuant to the provisions of Act No. 6 of 1932, and seized the property of petitioner located in the Parish of Ouachita and advertised same for sale on October 20, 1934, to pay and satisfy the demands made by the Supervisor of Public Accounts hereinabove referred to. Respondent denies all other allegations in paragraph Fifteen of complainant's bill, especially the allegations that the property herein was illegally seized, and that the demands of the Supervisor of Public Accounts upon the complainant herein for the tax involved were unlawful.

Respondent denies the allegations contained in paragraph Sixteen, with exception of those specifically admitted. Further, respondent denies that the tax claimed by the Supervisor of Public Accounts of Louisiana from complainant under the provisions of Act No. 6 of the Louisiana Legislature of 1932 are unlawful and illegal, and shows that same are lawful and legal, and in no way violates the Constitution of the United States or the Constitution of the State of Louisiana.

[fol. 46] (a) Respondent denies that said statute contravenes Article 1, Sections 8 and 10 of the Constitution of the United States reserving to the Congress of the United States the sole power to regulate commerce between the several States; respondent further denies that the Prime Movers owned and used by complainant at the Munce Station are instrumentalities of interstate commerce, and denies that said Prime Movers are employed by petitioner in interstate commerce, and further denies that without said Prime Movers the complainant could not engage in interstate business described in complainant's bill and, further, respondent denies that the excise, license or privilege tax levied by Section 3 of Act No. 6 of the Louisiana Legislature of 1932 is a direct burden upon such interstate commerce, as alleged by complainant. On the contrary, respondent shows that the Prime Movers owned and used by complainant at the Munce Station consist mechanically of ten (10) four cylinder Cooper Bessemer In-

ternal Combustion engines, which are bolted down to concrete and remain at all times in a permanent place or situs at the plant, within the State of Louisiana. Further, respondent shows that said Prime Movers are used by complainant for the exclusive purpose of manufacturing or generating mechanical power which is, after its manufacture and generation, transmitted through the medium of rods to the compressors, in the same manner as electrical energy is transmitted over wires, and this said power, after it is manufactured, generated, and produced, just as any other manufactured article, is transmitted to the point of use, and is used by complainant to operate the compressors which gather the gas involved from the wells through the system of feeder lines, and which compressors enable the wells to produce, and after enabling the wells to produce and drawing the gas therefrom, compresses it into said articles for transportation, and forces said gas through a meter at the point of intake into the Twenty Inch (20") [fol. 47] interstate main; respondent further shows that the generation and manufacture of said power is separate and distinct from its use; that the manufacture and use are not simultaneous acts; that the Prime Movers generate and manufacture mechanical power which is later used to operate said compressors, which power when so manufactured and generated is comparable to the manufacture of physical articles of trade, and the transmission and use of said power is comparable to subsequent shipment, transporting and use of other physical articles of trade. Respondent further shows that, when said power is manufactured or generated by said Prime Movers, there is created a distinct product, namely, mechanical power. Respondent further shows that the generation and manufacture of said mechanical power by said Prime Movers is essentially local in character and complete in itself.

(b) Respondent shows that the allegations contained in sub-paragraph "b" of paragraph Sixteen has, since the suit at bar was filed, been passed on and determined by the Supreme Court of the State of Louisiana in the case of *State v. H. L. Hunt*, 182 La., 1037, 162 So., 777, wherein the Court held that the excise, license or privilege tax levied by Section 3 of Act No. 6 of the Louisiana Legislature for 1932, for the privilege of generating or manufacturing power was not in conflict with Article 10, Section 21 of the Constitution of

Louisiana for 1921; further, respondent denies that the Prime Movers, described herein, are essential and necessary instrumentalities of interstate commerce conducted by complainant. Respondent denies that the Legislature of Louisiana was without authority to place said license or privilege tax upon the privilege of generating or manufacturing mechanical power, the ultimate use of which power was to be used in the production of gas. Respondent denies the remaining allegations in sub-paragraph "b" in paragraph Sixteen of complainant's bill.

[fol. 48] (c) Respondent denies that the tax is imposed directly upon the machinery and equipment owned by complainant, as alleged in sub-paragraph "c" of paragraph 16, and denies that said tax is a property tax. Respondent further denies that the tax levied by said Act constitutes double taxation and denies that said tax is contrary to the provisions of Article 10, Sections 1 and 3 of the Constitution of 1921, and denies that Section 3 of Act No. 6 of 1932 is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Respondent shows that, in the case of *State v. Hunt*, 182 La., 1073, 162 So. 777, the Supreme Court of Louisiana, passed on the questions raised by the allegations contained in sub-paragraph "c" of paragraph 16 of complainant's bill, and held that the tax levied by Section 3, of Act No. 6 of 1932, involved herein, was not a property tax, but an excise, license or privilege tax, levied for the privilege of generating power in the State of Louisiana, and that said Section of said Act did not violate Sections 1 and 3 of Article 10 of the Constitution of Louisiana for the year 1921, and did not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Respondent denies the remaining allegations contained in sub-paragraph "c" of paragraph 16 of complainant's bill.

(d) Respondent denies the allegations in sub-paragraph "b" of paragraph 16 of complainant's bill, and shows that the tax levied by said Act is classified, graduated and progressive, as required by Article 10, Section 8 of the Constitution of Louisiana for the year 1921; that the Supreme Court of the State of Louisiana, in the case of *State v. Hunt*, 182 La., 1073, 162 So., 777, held that said tax was classified, graduated and progressive, as required by Article 10, Sec-



tion 8 of the Constitution of 1921, and did not violate said provisions.

[fol. 49] Further answering, respondent avers that Article 10, Section 8 of the Constitution of 1921 does not make it mandatory upon the Legislature of Louisiana to make any tax classified, graduated or progressive, that said provisions in the Constitution are merely permissive, and your respondent further avers that said tax is classified.

(e) Respondent denies that Act No. 6 of 1932 denies the complainant the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution, as alleged in sub-paragraph "e" of paragraph 16 of complainant's bill; further, respondent shows that the Supreme Court of the State of Louisiana, in the case of *State v. Hunt*, 182 La., 1072, 162 So., 777, held that Section 3 of Act No. 6 of 1932, involved herein, did not violate the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

Respondent further avers that if there is any difference in rates required to be paid under said Act by one who purchases this power and one who develops and manufactures or uses its own power, that the complainant has the same right as any other person to purchase its power; that the complainant is in the same class with other persons similarly situated.

(f) Respondent denies the allegations of sub-paragraph "f" of paragraph 16 of complainant's bill, and denies that there is an arbitrary discrimination against complainant, and others similarly situated, in favor of persons and corporations purchasing power in the form of electrical energy in the conduct of similar business enterprises. Respondent further shows that the Supreme Court of Louisiana, in the case of *State v. Hunt*, 182 La., 1073, 162 So., 777, held that, under the Constitutional laws of the State of Louisiana, Section 3 of Act No. 6 of 1932, involved herein, does not arbitrarily discriminate against complainant, and others similarly situated, in favor of persons and corporations purchasing power in the form of electrical energy in the conduct of similar business enterprises. Respondent further denies that any tax has been levied against complainant for [fol. 49½] "stand-by" or emergency facilities, and avers that the tax claimed is based upon the manufacturer's rating

of complainant's equipment as furnished by complainant in making its return. Respondent denies all other allegations contained in sub-paragraph "f" of paragraph 16 of complainant's bill.

## 17

Respondent denies the allegations contained in paragraph Seventeen of complainant's bill, and denies that respondent employed any scheme to fix the amount of taxes demanded, and denies that respondent arbitrarily assumed the capacity of the machinery owned by complainant. Respondent further denies that complainant is denied the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution, and again avers that the amount of tax claimed is based upon the capacity of the equipment and machinery as shown by the return made by complainant and in conformity with the law. Respondent avers that if there is any diminution in the capacity of complainant's machinery and equipment that this is the fault of complainant in not keeping the machinery and equipment in proper condition of repair. The remaining allegations contained in paragraph Seventeen are denied.

## 18

Respondent denies the allegations of paragraph Eighteen and avers that all tax debtors, including complainant, are subject to all of the penalties imposed by the General License Law of the State, including attorney's fees, as provided by Section 8 of Act No. 6 of 1932.

## 19

The allegations of paragraph Nineteen are denied in full.

[fol. 50]

## 20

Respondent admits that he, as Sheriff and Tax Collector of the Parish of Ouachita, did carry out his duty as provided in the law, and under the instructions of the Supervisor of Public Accounts. The remaining allegations of paragraph Twenty are denied.

## 21

Respondent admits the allegations of paragraph Twenty-one, but shows that, since the institution of the suit at bar,

complainant has dismissed the suit referred to in paragraph Twenty-one of its bill.

22

Respondent admits the allegations contained in paragraph Twenty-two of complainant's bill, and further answering shows that said suit has been dismissed by complainant since the institution of the suit at bar.

23

Respondent denies the allegations of paragraph Twenty-three, but admits that he will perform his duty under the provisions of Act No. 6 of 1932, and under the instructions of the Supervisor of Public Accounts, who is charged with the duty of enforcing said Statute.

24

The allegations contained in paragraph Twenty-four of complainant's bill are denied.

25

Respondent is without information as to the value of complainant's property, and denies that complainant will suffer irreparable injury. The remaining allegations of paragraph Twenty-five are denied.

26

In the alternative, and in the alternative only, respondent shows that if the court should hold that the tax involved herein is a burden on interstate commerce, which is denied by respondent, and in that event only, respondent shows that said tax is an indirect burden on interstate commerce, [fol. 51] and is, therefore, not violative of the commerce clause of the Federal Constitution.

27

Respondent further shows that the taxes involved in the litigation at bar are for the years ending July 31, 1933, July 31, 1934, July 31, 1935, and July 31, 1936; that for the year ending July 31, 1933, there remains due and unpaid the State of Louisiana, respondent herein, the full sum, under the Statute involved herein, of Ten Thousand Seven Hundred and Seventeen Dollars and Forty Cents (\$10,717.40) together with penalties thereon provided by the Statute, and in addition, 10% upon said tax and pen-



alties, as attorney's fees; for the year ending July 31, 1934, complainant herein owes the respondent, the State of Louisiana, under the Statute involved herein, the full sum of Nine Thousand Two Hundred and Seventy-Five Dollars (\$9,275.00), together with penalties as provided by said Statute, and in addition thereto, 10% on said tax and penalties as attorney's fees; for the year ending July 31, 1935, complainant herein owes and is indebted unto respondent, the State of Louisiana, under the Statute involved herein, in the full sum of Seven Thousand Three Hundred Dollars (\$7,300.00), together with interest and penalties at the rate of 2% per month from September, 1935, to date, in the full sum of Two Thousand Three Hundred Thirty Six Dollars (\$2,336.00), together with 10% upon said principal and interest and penalties as attorney's fees; for the year ending July 31, 1936, complainant herein is indebted unto the respondent, under the Statute involved, in the full sum of Eight Thousand Two Hundred and Sixty Dollars, (\$8,260.00), together with interest at the rate of 2% per month from September, 1936, to date, which said interest amounts to date to the full sum of Six Hundred Sixty Dollars and Eighty Cents (\$660.80), together with 10% upon said tax and penalties and interest as attorney's fees.

[fol. 52]

28

For the reasons set forth in this answer, respondent shows that the bill of complaint filed herein by complainant should be dismissed at complainant's cost.

Wherefore, respondent prays that the interlocutory injunction issued herein be recalled and set aside, and that the bill of complaint filed herein by complainant be dismissed at complainant's cost.

Respondent further prays for all necessary orders and decrees, and for general and equitable relief:

Gaston L. Porterie, Attorney General of Louisiana.  
Justin C. Daspit, Special Assistant Attorney General.  
F. A. Blanche, Special Assistant Attorney General.  
E. L. Richardson, Special Assistant Attorney General.

[fol. 53] *Duly sworn to by Milton Coverdale. Jurat omitted in printing.*

[File endorsement omitted.]

6

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF T. W. JOHNSON—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared T. W. Johnson, who, being first duly sworn, deposes and says that he is presently employed as an engineer by the United Gas Public Service Company at Shreveport, Louisiana; that he has been engaged constantly in engineering work, having to do with the transportation of natural gas by pipe lines, since his graduation from Montana State College in 1924, in which institution he studied mechanical engineering; that after his graduation from Montana State College he was employed for a period of two years by the Empire Oil & Refining Company as a junior engineer in natural gas and petroleum work, after which he was for ten years prior to his employment by United Gas Public Service Company employed constantly by the United States Bureau of Mines, Petroleum Division, with headquarters at Bartlesville, Oklahoma, performing work, the greater part of which was connected with the natural gas industry; that in the course of his experience outlined he has become thoroughly familiar with the principles involved in the transportation of natural gas by pipe line and is thoroughly familiar with the character of equipment and machinery employed at the Munce Compressor Station of Arkansas Louisiana Pipeline Company as described in the affidavit of A. B. Singletary, Jr. and disclosed upon the exhibits made part of his affidavit filed herein, and with the methods employed in the transportation of natural gas through pipe line by such equipment.

[fol. 55] Deponent further says:

That compressor units, such as those described as being employed at the Munce Compressor Station of Arkansas Louisiana Pipeline Company, are universally employed in the transportation of natural gas by pipe line over any considerable distances and are so universally employed for practical and economic reasons which preclude the construction of lines of such enormous size as might theoretically transport gas in commercial quantities without the means of artificial boosting or pressure; that the compressors described and employed at the Munce Compressor Station

from an integral part of the pipe line through which natural gas is transported, and the engines used in connection with such compressors are used solely and only to facilitate the movement of natural gas through the pipe lines.

Because of the physical design, assembly and type of equipment employed, the energy created by the operation of the engines in use is not susceptible of transmission over any considerable distances and can be used only for the purposes intended or the transmission of the natural gas transported, through the lines of which the compressors form an integral part and the energy created for these reasons cannot be considered to have any commercial value independently of the operation described.

The flow of natural gas through a pipe line is affected and determined by several factors, the principal of which are:

The length and size of the line; the quantity of gas to be transported and the difference between pressures at the inlet and outlet points;

the difference in pressure between any two points along the line of transportation causing a flow of gas between such points and through the line.

[fol. 56] Although, as already suggested, theoretically a line might be constructed of such size as to bring about the transportation of gas without the use of artificial power, for practical reasons this cannot be done in the commercial marketing of gas over considerable distances in which character of transportation artificial power and compressors are universally employed, and when so used, are used solely for the purpose of affording a means of transporting required volumes of gas through the pipe lines in use, and without which such transportation would be from all practical considerations impossible.

In the operation of compressor units such as those described, no power is generated in the compressor unit except that required to overcome frictional resistance in the unit itself until gas is admitted to the compressor cylinder. Therefore, it is apparent that power is involved only when consumed by the operation of the unit in the compression of gas which creates a movement of that product in the pipe line, as a result of which the transportation of the natural gas is accomplished.



Deponent further says:

That from the descriptions of the source of the supply of gas compressed at the Munce Compressor Station and the pressures of wells involved, it is apparent that the action of the compressors located at the Station do not operate to affect or increase the open flow capacity of any well from which production is obtained or the ability of any such well to produce gas against atmospheric pressures, the function of the compressors, in so far as the gathering lines are concerned, being merely to remove the gas from the gathering lines at the location of the compressors and by such removal to permit the flow of additional gas into such lines from the well pressures.

T. W. Johnson.

[fol. 57] Sworn to and subscribed before me, notary, on this 18th day of December, 1936. Leon O'Quin, Notary Public in and for Caddo Parish, Louisiana.

[File endorsement omitted.]

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[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. T. GOSS—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared H. T. Goss, who, being by me duly sworn, deposes and says that he has been employed as an engineer by the Arkansas Louisiana Pipeline Company at its office in Shreveport, Louisiana, for more than six years and has been chief engineer of that corporation for a period exceeding three years; that he has been familiar with the interstate gas line operated by Arkansas Louisiana Pipeline Company extending from Sterlington, Ouachita Parish, Louisiana, into the States of Arkansas and Texas since its construction and is thoroughly familiar with the equipment and operation of the line; that he has been familiar with the principles involved in the transmission of natural gas by pipe line for a period of more than fourteen years, during which time or after his graduation from Texas Agricultural and Mechanical College, where he studied mechanical engi-

neering; he has been constantly engaged in employments involving such transmission; that in connection with his work he has necessarily familiarized himself with the character and types of engines employed at what is referred to as the Munce Compressor Station of Arkansas Louisiana Pipeline Company located in the Parish of Ouachita.

Deponent further says:

Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is [fol. 59] an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines.

Briefly described, the energy created by the explosion of a mixture of natural gas and air under proper conditions in the engine cylinder is imparted directly by means of the piston rod to the compressor cylinder in which the natural gas is compressed. The energy so created has no commercial value in the sense that electricity has a commercial value. The energy created due to the physical design, assembly and type of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder.

In the process of compression, the chemical properties of the natural gas itself remain unchanged.

The flow of natural gas through a pipe line is a function involving various factors, the most important of which are:

- (1) The inlet pressure.
- (2) The outlet pressure.
- (3) The length of the line.
- (4) The size (diameter) of the pipe.
- (5) The quantity of gas to be transported.

From the above it is apparent that for any given condition as to length and size of line, the flow of a given quantity of gas through a pipe line depends on the difference in pressure of the gas between the inlet and outlet points. In other words, difference in pressure between any two points

along a pipe line causes a flow of gas between the two points and through the pipe line.

It is also apparent from the above, that theoretically, a line could be constructed for the transportation of gas without the means of artificially boosting the pressures, [fol. 60] so long as any pressure exists at the inlet. However, in some cases, practical and economic limits preclude such enormous sizes of pipe lines that in practical design and construction, smaller size lines are selected and compressor stations are installed to increase the pressure of the gas to such an extent as to cause the flow of the required amount of gas through the pipe size selected. In other words, the installation and operation of a compressor station, such as that referred to as the Munce Compressor Station, is for the sole purpose of affording means of transporting required volumes of gas through the pipe lines and without such equipment, such transportation would be impossible.

The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome frictional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe lines, which movement to the required degree would be impossible without such power.

The place of location of a compressor station along a pipe line is determined by pressure conditions, and in the case of the Munce Compressor Station has been fixed near the source of supply or wells producing the natural gas to offset the decline in initial well pressures. The gas is brought to the inlet of the compressor through so-called field gathering lines and flows into the compressor cylinder under the pressure of those lines, the flow being permitted by the action of the compressor which causes a pressure differential [fol. 61] to exist permitting the flow of gas from the gathering lines into the compressor. The gas is then compressed in the compressor cylinder and discharged into the trans-

mission line. The action of the compressor does not operate to increase the open flow capacity of any well from which production is obtained or the ability of any such well to produce gas against atmospheric pressures, its function, in so far as the gathering lines are concerned, being merely to remove the gas from the gathering lines at the location of the compressor and by such removal to permit the flow of additional gas into such lines from the well pressure.

H. T. Goss.

Sworn to and subscribed before me, notary, on this 18 day of December, 1936. Leon O'Quin, Notary Public in and for Caddo Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. T. GOSS—Filed December 17, 1935

Before me, the undersigned authority, personally came and appeared H. T. Goss, who, being by me duly sworn, deposes and says that he has been employed by the Arkansas-Louisiana Pipeline Company at its office in Shreveport, Louisiana, for approximately six years and is now chief engineer of that corporation, a position which he has occupied for three years; that he has been familiar with the interstate gas line operated by Arkansas-Louisiana Pipeline Company extending from Sterlington, Ouachita Parish, Louisiana into the States of Arkansas and Texas as described in the petition in the above suit since its construction; that he has been familiar with the principles involved in the transmission of natural gas for a period of more than twelve years, during which time he has been constantly engaged in employments involving such transmission; that in connection with his work he has been necessarily familiar with the character and types of engines employed at what is referred to as the Munce Compressor Station; that this Compressor Station and the engines employed there are necessary and essential to the distribution of gas in the interstate line for the following reasons:



"The frictional resistance in pipe lines is such that the power involved in raising the pressure of the gas from the field pressure is essential to the movement of the required volumes of natural gas and that degree of power from the Compressor Station in question must be used in the operation of the interstate line, which added to the field pressure of gas entering the Compressor Station would be required to place into the line a sufficient volume of gas to permit constant deliveries at distant points on the line.

[fol. 63] In referring to the necessary volumes indicated is meant a certain volume of gas within a specified period of time, in that were time, not an element of transmission, pressures would tend to be equalized. However, considering the fact that withdrawals must be made to meet consumer requirements, the above condition of pressure equilization is impossible, creating the necessity for equipment to provide adequate pressures to cause a flow of gas through the line."

H. T. Goss.

Sworn to and subscribed before me, notary, on this 10th day of December, 1935. Leon O'Quin, Notary Public in and for Caddo Parish, Louisiana. (Seal.)

[File endorsement omitted.]

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[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF PAUL WEEKS—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport, in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared Paul Weeks, who, being by me duly sworn, deposes and says:

That he is and has for some years been a resident of Shreveport, Louisiana; since 1930, he has been employed by Arkansas-Louisiana Pipeline Company, in charge of well drilling and production in the gas division of that Company.

During the year ending July 31st, 1933, complainant owned and operated in the Richland gas field approximately eleven gas wells, the production from which was delivered to the Munce Compressor Station at Sterlington. Such gas was taken from the wells into the Company's field gathering system and transported from the Richland field under the well pressure to Munce Station, approximately twenty-five miles northwest, and was there put into the 20-inch line by the compressors. During the period mentioned, well pressures in the Richland field were decreasing steadily, and in the spring of 1933 the highest pressure in any well owned and operated by complainant was approximately 250 pounds; during the same period, pressures in the 20-inch line were maintained at 275 pounds or more; therefore, the [fol. 65] Richland wells mentioned could not have delivered gas into the pipeline under well pressures.

Complainant, during the year ending July 31st, 1933, owned and operated five wells in the Monroe gas field, which delivered gas into the 20-inch gas pipeline herein mentioned; well pressures generally in the Monroe gas field, during that period, ranged approximately from 200 pounds to 800 pounds. No well with a pressure less than that maintained in the 20-inch pipeline would have delivered gas without the use of compression into said line in any amount; and wells with pressure greater than that maintained in the 20-inch pipeline would have delivered gas into said line, but the rate of flow into the line would have been diminished. The use of power in the form of compression at Munce Station was necessary during that time in order to deliver into the 20-inch pipeline gas in quantities sufficient to meet the requirements of complainant's business, considering the pressure at which said gas was received from sellers at the intake side of Munce Compressor Station.

Deponent further says that the statements made in this affidavit are statements of fact within his knowledge.

Paul Weeks.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroneel, Notary Public in and for Caddo Parish, Louisiana.

[File endorsement omitted.]

[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. E. NESTOR—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport, in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared W. E. Nestor, who, being by me duly sworn, deposes and says:

That he is and has since 1920 been a resident of Shreveport, Louisiana. Since 1909, deponent has been in the natural gas business in the construction or operation of natural gas compressors. Since 1920, deponent has been Superintendent of Compressor Stations of Arkansas-Louisiana Pipeline Company, complainant in this cause, or of the corporations to which it is successor, in direct charge of all its compressor stations, including Munce Station, at Sterlington, Ouachita Parish, Louisiana.

Munce Station at Sterlington consists of ten 1,000 horsepower Cooper Bessemer gas burning engines, directly connected to ten gas compressors, and two 250 horsepower gas burning engines directly connected to electric generators; all housed in one main building and an auxiliary building in which is also a machine shop. The station can not be operated without the use of auxiliary power to furnish station lighting, water for cooling the engines and pumps, compressed air for starting the engines, and power for the machine shop; the most convenient method of furnishing such auxiliary power is in the form of electric energy, and at the present time all gas compressor stations use electric energy for incidental power required for the purposes mentioned.

In the Monroe gas field there are some six or more gas compressor stations, in addition to Munce Compressor Station; none of which is quite as large as Munce Compressor Station, but several of which, including that owned and operated by Mississippi Fuel Gas Company, are comparable in size to Munce Station; all of the compressor stations in the Monroe field, except Munce Station, use purchased electricity to furnish power for incidental purposes around the station; but all of said stations maintain standby generator



and engine for use in the case of failure of purchased power. In deponent's opinion the failure of the electric power at a compressor station would necessitate the shutting down of the station until such power could again be obtained. One of the engines and generators is all that is required to furnish electric power for use at Munce Station; the other is maintained as standby equipment, although the two are used alternately to equalize wear and depreciation.

In connection with his duties as Superintendent of Compressor Stations, deponent keeps a record of the number of hours operated every day by all of the engines, compressors and generators at Munce Station; the two 250 horsepower gas engines at Munce Station used for generating electricity in the year ending July 31, 1933, each operated 4,380 hours; the ten 1,000 horsepower Cooper Bessemer gas burning engines at Munce Station, directly connected to the gas compressors, were operated during that period of time as follows, to-wit:

Engine number	Hours operated
4463 .....	2,439
4493 .....	2,679
4492 .....	2,652
4494 .....	2,487
4495 .....	2,759
4497 .....	2,641
4443 .....	2,928
4444 .....	2,995
4446 .....	2,959
4445 .....	2,551

[fol. 68] Deponent furnished the figures given above from his records to M. J. Lasseigne, who is in charge of Arkansas-Louisiana Pipeline Company's Tax Department, prior to August 31st, 1933, in order for him to prepare the Company's power tax return for the period ending July 31st, 1933.

Each of the engines used for pumping gas, mentioned above, is rated by the manufacturer thereof as being of 1,000 horsepower, and the two engines used for generating electricity are each rated by the manufacturer as being of 250 horsepower, which facts were also reported by deponent to said Lasseigne. Deponent has examined the return dated August 31st, 1933, filed for the period ending July 31st, 1933, for Arkansas-Louisiana Pipeline Company in respect

of the prime mover tax imposed by Act No. 6 of 1932, and finds that it contains a complete list of each and every piece of machinery or apparatus operated by complainant company during the year ending July 31st, 1933, for the purpose of producing power for use in the conduct of said Company's business, together with the manufacturer's rated horsepower capacity of each of such machines. In addition, deponent finds that the operated horsepower shown upon said return is the product of the manufacturer's rated horsepower capacity and the fraction obtained by dividing total number of hours such machine was operated by the total number of hours in the year. In addition, said return shows as to all of such machines the percentage of manufacturer's rated horsepower capacity attained by each of such machines at the time same were operated to the greatest extent, that is, in the case of the ten 1,000 horsepower engines, 95%.

From deponent's experience in the operation of gas compressor stations, it is, in his opinion, necessary to maintain some equipment in addition to that normally needed. This is a general practice in all compressor stations. Such additional equipment is absolutely necessary in order to have equipment for use during time repairs are being made, to meet unusual demands, and in the case of breakdown of part of the equipment used.

During the summer months normally three engines of the ten at Munce Station are all that are used at one time; during the winter months five engines furnish the necessary power, and occasionally six engines are used to meet unusual demands. On one occasion it became necessary to operate seven of the engines at one time. This was brought about by an unusual condition of low pressure in the field gathering system connected to the intake side of the pumps. However, the various engines are used alternately to equalize wear and depreciation.

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

W. E. Nestor.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroncel,  
Notary Public in and for Caddo Parish, Louisiana.

[File endorsement omitted.]

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF M. J. LASSEIGNE—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport, in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared M. J. Lasseigne, who, being by me duly sworn, deposes and says:

That he is now and has been for the last twelve years a resident of the City of Shreveport, Caddo Parish, Louisiana, in which City is located the general office of Arkansas-Louisiana Pipeline Company, complainant in the above entitled and numbered cause. That he is employed by complainant in this cause, is in charge of its Tax and Insurance Department, and has been so employed since 1931.

That his duties, as to taxes, consist in preparing proper renditions and returns and making payment of all taxes due by that Company of every nature and kind to Federal, State and local governments. In accordance with his duties under his said employment in the month of August, 1933, he prepared a return as required by Act No. 6 of the Legislature of Louisiana for the year 1932, levying a tax upon all persons generating power for their own use. That, in accordance with the requirements of the statute, the return was signed and sworn to by B. R. Muirhead, Treasurer of [fol. 71] Arkansas-Louisiana Pipeline Company, who is deponent's immediate superior, but it was entirely prepared by deponent.

The said return was dated August 31st, 1933, and was by deponent filed with Miss Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana; payment was made to her at that time of the amount of tax shown to be due thereby. A carbon copy of the said return is attached to and made a part of this affidavit, marked "Exhibit 1".

The return contains in detail a complete list of each and every piece of machinery or apparatus operated by Arkansas-Louisiana Pipeline Company during the year ending July 31st, 1933, for the purpose of producing power for use in the conduct of the said Company's business, together with the manufacturer's rated horsepower capacity of each of such machines.

In addition to the information mentioned in the preceding paragraph, the said return shows also, as to each of such machines, the operated horsepower, that is, the product of the manufacturer's rated horsepower capacity and the fraction obtained by dividing total number of hours such machine was operated by the total number of hours in the year. In addition, said return shows, as to all of such machines, the percentage of manufacturer's rated horsepower capacity attained by each of such machines at the time same were operated to the greatest extent. All of the information as to such machines, shown on the return, was furnished to deponent by W. E. Nestor, complainant's Superintendent of Compressor Station. The tax assessed by Act No. 6 of 1932 was computed and paid, all as shown by the attached return, on the basis of the use made of the engines, that is, at \$1.00 per horsepower on the sum obtained by taking the percentage of rated horsepower attained by the engines times the operated horsepower as hereinabove defined.

On or about July 27th, 1934, deponent received by registered mail from Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana, a letter and duplicate original of an [fol. 72] affidavit executed by her (which are attached to and made part hereof marked, respectively, "Exhibit No. 2" and "Exhibit No. 3") claiming additional power tax, under the statute referred to, in respect of complainant's engines at its Munce Compressor Station at Sterlington, Ouachita Parish, Louisiana, and the affidavit purporting to impose a lien upon complainant's property. Except as to that letter and affidavit, no demand has ever been made upon complainant for additional tax under Act No. 6 of 1932, nor has any such additional tax liability ever been asserted by the Supervisor of Public Accounts of Louisiana or her agents.

Deponent further says that payment of severance taxes, due to the State of Louisiana on account of the production of natural gas by complainant, is made by him as part of his duties described in this affidavit. Payment of severance taxes, in accordance with the laws of the State of Louisiana, was made during all of the period of time ending on July 31st, 1933 to the Sheriffs and Ex-Officio Tax Collectors of Richland Parish and Ouachita Parish, Louisiana, and to the best of deponent's information and belief, such payments



were at the rate prescribed by law for all severance taxes levied by the State of Louisiana for all gas produced by complainant in said parishes during the period of time mentioned.

Deponent attaches to this affidavit as part hereof marked, respectively, "Exhibits Nos. 4, 5, 6 and 7", copies of the assessments of complainant in Ouachita Parish, Louisiana, for State and Parish taxes for 1932 and 1933, certified by Milton M. Coverdale, Sheriff and Ex-Officio Tax Collector, Ouachita Parish, Louisiana, defendant in this cause, and tax receipts showing payment of taxes under such assessments. The "Compressor Station" shown thereon is Munce Compressor Station; and the valuation assigned thereto is based largely upon the value assigned to the engines used to operate said station and in respect of which engines the Supervisor of Public Accounts is now claiming additional [fol. 73] tax under Act No. 6 of 1932.

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

M. J. Lasseigne.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroncel,  
Notary Public in and for Caddo Parish, Louisiana.  
(Seal.)

[File endorsement omitted.]

[fol. 74]

EXHIBIT 1 TO AFFIDAVIT

Electric Power Tax

Annual Report of

Arkansas-Louisiana Pipe Line Co.,

(Name)

Box 1734, Shreveport, La.

(Address)

To the Supervisor of Public Accounts for the State of Louisiana, as required by Act 6 of 1932, showing the gross receipts derived from the sale of Electricity manufactured

in the State, and the gross receipts of the Electricity from the sale of Electricity purchased also the horsepower capacity of machinery taxed under Section 3 of the above mentioned Act.

For the fiscal year ending July 31, 1933.

Gross receipts from sale of Electricity manufactured or generated.....	\$.....	
Gross receipts from the sale of Electricity purchased .....	\$.....	
Value of Electricity supplied to a Branch or Branches not operating under permit or franchise from the State of Louisiana.....	\$.....	
<b>Total Receipts and Value from Electricity .....</b>	<b>\$.....</b>	<b>\$.....</b>
<b>Less:</b>		
Amount received from the sale of Electricity to the State of Louisiana or subdivision thereof (See itemized list on reverse side.).....	\$.....	
Amount sold for resale (See itemized list on reverse side).....	\$.....	
<b>Total deductions .....</b>	<b>\$.....</b>	
<b>Net taxable value at 2% .....</b>	<b>\$.....</b>	
<b>Total Tax Due on Sale of Electricity.....</b>	<b>\$.....</b>	
Total horsepower capacity of machinery or apparatus taxed by Section 3 of the above-mentioned Act at \$1.00 per horsepower, making tax due in the amount of.....		\$4,172.60
<b>Total Tax Due Under the Above Mentioned Act by the undersigned deponent .....</b>	<b>\$4,172.60</b>	

### Affidavit

STATE OF LOUISIANA,  
Parish of Caddo:

Before me, the undersigned legal authority, personally came and appeared B. R. Muirhead, who being by me first duly sworn, deposes and says that the above and foregoing

statement is true and correct, and that, as representing the above named company, he is duly authorized to make this affidavit.

\_\_\_\_\_, Treas.  
(Signature of Deponent)

Sworn to and subscribed before me this 31st day of August, 1933. \_\_\_\_\_, Notary Public.

(Here follows 1 pasteur, side folio 75)

[fol. 75]

## Arkansas Louisiana Pipeline Company

Location of Prime Mover	Manufacturer's Name	Serial or Shop No.	Size	Source or Energy	Manufacturer's Rating	Work of Prime Remover	Date of Purchase	Operated H.P.
Sterlington, Louisiana	Cooper-Bessemer Corp.	8040	14 3/4"x16" 4 Cyl'd	Natural Gas	250 H.P.	Gen. Elect.	1929	125
Sterlington, Louisiana	Cooper-Bessemer Corp.	8041	14 3/4"x16" 4 Cyl'd	Natural Gas	250 H.P.	Gen. Elect.	1929	125
Sterlington, Louisiana	Cooper-Bessemer Corp.	4463	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	274.8
Sterlington, Louisiana	Cooper-Bessemer Corp.	4493	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	305.8
Sterlington, Louisiana	Cooper-Bessemer Corp.	4492	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	302.7
Sterlington, Louisiana	Cooper-Bessemer Corp.	4494	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	283.9
Sterlington, Louisiana	Cooper-Bessemer Corp.	4495	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	314.9
Sterlington, Louisiana	Cooper-Bessemer Corp.	4497	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	301.4
Sterlington, Louisiana	Cooper-Bessemer Corp.	4443	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	334.2
Sterlington, Louisiana	Cooper-Bessemer Corp.	4444	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	341.8
Sterlington, Louisiana	Cooper-Bessemer Corp.	4446	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	337.8
Sterlington, Louisiana	Cooper-Bessemer Corp.	4445	21 1/2"x36" 4 Cyl'd	Natural Gas	1000 H.P.	Comp. N. Gas	1929	291.2
Lewis, Louisiana	Snow Steam Pump Works	G-208	24"x48" 4 Cyl'd	Natural Gas	1300 H.P.	Comp. N. Gas	1911	313.8
Lewis, Louisiana	Snow Steam Pump Works	G-209	24"x48" 4 Cyl'd	Natural Gas	1300 H.P.	Comp. N. Gas	1911	284.6
Lewis, Louisiana	Snow Steam Pump Works	G-210	24"x48" 4 Cyl'd	Natural Gas	1300 H.P.	Comp. N. Gas	1911	391.7
Lewis, Louisiana	Bruce-Macbeth Gas Eng. Co.	669	10"x11" 4 Cyl'd	Natural Gas	100 H.P.	Gen. Elect.	1913	50
Lewis, Louisiana	Bruce-Macbeth Gas Eng. Co.	670	10"x11" 4 Cyl'd	Natural Gas	100 H.P.	Gen. Elect.	1913	50
Rodessa, Louisiana	Westinghouse Elec. & Manufacturing Co.	1393	9"x11" 3 Cyl'd	Natural Gas	60 H.P.	Gen. Elect.	1913	12.8
Rodessa, Louisiana	Donovan	1394	9"x11" 3 Cyl'd	Natural Gas	80 H.P.	Gen. Elect.	1913	12.8
Rodessa, Louisiana	Donovan	....	85 H.P.	Natural Gas	85 H.P.	Drive Pumps	1927	
Rodessa, Louisiana	Donovan	....	85 H.P.	Natural Gas	85 H.P.	Steam	1927	4454.20

## Munce Station at Sterlington

When plant operated peak day engine developed only 95% of rated H.P. Therefore, taxable H.P. is  $3088.5 \times 95\% = 2934$  plus 250 equals 3184

## Rogers Station at Lewis

When plant operated peak day engine developed only 70% of rated H.P. Therefore, taxable H.P. is  $990.1 \times 70\% = 693$  plus 25.6 " 718.6  
 Serial No. 609 and 670

Two Boilers	Grand Total	4002.6
		170
		4172.6

\*1 First two items.

\*2 Last two items but two.



[fol. 75½]

## EXHIBIT 2 TO AFFIDAVIT

Baton Rouge, Louisiana,  
July 26, 1934.

Arkansas-Louisiana Pipe Line Co., P. O. Box 1734, Shreveport, Louisiana.

## In re Power Tax, Act 6 of 1932

## GENTLEMEN:

On July 25, 1934, the Supervisor of Public Accounts caused to be filed and recorded in the mortgage records of Ouachita Parish, a sworn statement showing amount of power tax due by you for the fiscal year beginning August 1, 1932 and ending July 31, 1933, in the principal sum of \$7,316.00 plus the penalty of 25% amounting to \$1,829.00, making a total of \$9,145.00, all as shown upon the duplicate of said sworn statement herewith enclosed, which statement now operates as a lien, privilege and mortgage against your property.

This is our demand for payment of the said power taxes together with penalty for delinquency and other penalties as set forth therein, pursuant to the provisions of Section 7 of Act 6 of 1932, requiring the giving of notice to the tax debtor by registered letter of the recordation of such statement. Please be advised that unless this demand is complied with within the fifteen days provided by law, the sheriff of Ouachita Parish will be instructed to seize and sell sufficient of your property within said parish to satisfy said taxes together with all penalties and costs.

Yours very truly, Supervisor of Public Accounts, by  
Justin C. Daspit, Office Attorney.

Registered Mail.

cc. Arkansas-Louisiana Pipe Line Co., Sterlington, La.

[fol. 76]

## EXHIBIT 3 TO AFFIDAVIT

STATE OF LOUISIANA,

Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared Miss Alice Lee Grosjean, Supervisor of Pub-

lic Accounts for the State of Louisiana, who, being first duly sworn, deposed and said:

That, acting under authority of Act 6 of the Regular Session of the Louisiana Legislature for the year 1932, and particularly Section 6 of said Act, she declares under oath:

1st. That the Arkansas-Louisiana Pipe Line Company, a corporation organized under the laws of the State of Delaware and doing business in the State of Louisiana, with its principal office in the City of Shreveport, Parish of Louisiana, is and has been engaged in the business of operating a pipe line for the distribution and/or sale of natural gas in the State of Louisiana during the twelve month period beginning August 1, 1932 and ending July 31, 1933, at its plant located at Sterlington in the Parish of Ouachita, Louisiana. That at its said plant during the period aforesaid the said Arkansas-Louisiana Pipe Line Company generated electrical and/or mechanical power for use in the conduct of its said business or occupation and is, therefore, subject to the power tax levied by Act 6 of 1932, particularly under Section 3 of said Act, at the rate of \$1.00 per annum for each horsepower of capacity of the machinery or apparatus known as the prime mover or prime movers.

2nd. That the power used by the said Arkansas-Louisiana Pipe Line Company in the conduct of its said business during the period aforesaid was not purchased, but was generated and produced by the said Arkansas-Louisiana Pipe Line Company at its said plant located at Sterlington in the Parish of Ouachita, Louisiana. That the source of energy was natural gas and the work of the prime mover or prime movers was described as that of generating electricity and compressing natural gas. That the total quantity of horsepower of capacity produced and used by the said Arkansas-Louisiana Pipe Line Company at its said plant located at Sterlington in Ouachita Parish, according to the manufacturer's rating, aggregates 10,500 horsepower of capacity of the machinery or apparatus known as the prime mover or prime movers.

3rd. That the total amount of tax due the State of Louisiana by the said Arkansas-Louisiana Pipe Line Company for the operation of its said plant located at Sterlington in the Parish of Ouachita, Louisiana, during the period from August 1, 1932 to and including July 31, 1933, is \$10,500.00,

being the tax levied by Section 3 of Act 6 of 1932 for the horsepower of capacity of the machinery or apparatus known as the prime mover or prime movers operated by [fol. 77] the said company at the rate of \$1.00 per annum for each horsepower of capacity of the machinery or apparatus known as the prime mover or prime movers. That the aforesaid amount of tax is subject to a credit of \$3,184.00 heretofore paid by the said Arkansas-Louisiana Pipe Line Company according to the report submitted by the said company to the Supervisor of Public Accounts of the State of Louisiana, which report is sworn to by B. R. Muirhead, Treasurer, under date of August 31, 1933, thus leaving a balance of \$7,316.00 for the operation of the plant of the said company at Sterlington in Ouachita Parish, Louisiana. That the said tax became delinquent on September 1, 1933, and is, therefore, subject to a penalty of 25% of the amount of tax on account of failure to have paid the same, which penalty amounts to the sum of \$1,829.00, thus making a total due the State of Louisiana of \$9,145.00, all of which is wholly due and unpaid, and as provided by Section 6 of the aforesaid Act.

4th. That the said Arkansas-Louisiana Pipe Line Company is legally obligated to the State of Louisiana for the power tax levied by Act 6 of 1932 covering the operation of its plant located at Sterlington in the Parish of Ouachita, Louisiana, in the principal sum of \$7,316.00, after allowing due credit for the amount paid thereon as aforesaid, plus the penalty of \$1,829.00 for delinquency as aforesaid, together with 10% on the aggregate amount of said tax and penalty as attorney's fees, and all penalties as provided by the general license laws of this state, together with all costs, pursuant to the provisions of the said Act 6 of 1932, known as the power tax law.

5th. That the aforesaid statement under oath is made for the purpose of filing the same in the mortgage records of the clerk and ex-officio recorder of the Parish of Ouachita, State of Louisiana, in which parish, at Sterlington, the said Arkansas-Louisiana Pipe Line Company is and has been during the period aforesaid conducting and operating its aforesaid business, in order that the same shall operate as a first lien, privilege and mortgage on all the property of the tax debtor in the Parish of Ouachita, and especially upon the machinery and other equipment of the Arkansas-

Louisiana Pipe Line Company located at its plant at Sterlington in said parish and state, pursuant to the provisions of Act 6 of 1932, and especially Section 6 thereof.

Alice Lee Grosjean, Supervisor of Public Accounts.

Sworn to and subscribed before me this 24th day of July, 1934. W. A. Cooper, Notary Public.

[fol. 78]

EXHIBIT 4 TO AFFIDAVIT

Arkansas Louisiana Pipe Line Company

Shreveport, Louisiana, Box 1734

35 acres. In N. E. corner Sec. 46 Twp. 20 N. R. 4 E. being 1383 feet along East bank Ouachita by 1015.60 feet by 1095.30 feet by 1647 feet bought of Cole as per deed Book 186-797, Misc. land .....	\$5,250.00
4 acres. In N. W. corner Lot 1 Sec. 31 Twp. 20 N. R. 4 E. bought of D. Y. Smith as per deed misc. land .....	1,000.00
Strip of land in Sec. 41 Twp. 19 N. R. 3 E 50 by 100 feet bought of J. W. Parks as per Deed Bk. 190-415 lot .....	150.00
148 Acres in Secs. 21, 28, 37 & 38 Twp. 18, N. R. 4 E. bought of D. A. Breard as per deed Book 181-598 misc. land .....	1,500.00
Compressor Station .....	619,650.00
10.10 miles 20 in. pipe .....	195,400.00
Gathering Line Misc. pipe .....	14,190.00
10 met. and Reg. ....	2,000.00
Private Telephone .....	1,010.00
10 Gas wells .....	30,000.00
	<hr/>
	\$870,150.00

State tax  $5\frac{3}{4}$  \$5,003.36, parish tax 4 mill 3,480.60, Dist. Levee  $2\frac{1}{2}$  2,167.85, school tax 3 mill 2,610.45, Dist Road #1  $2\frac{1}{4}$  mi. 1,957.84, Road Main 2 mil. 1,740.30, spec. school 4,350.75, Court House and jail  $\frac{3}{4}$  mi. tax 652.61, 1 mi. junior College \$870.15,  $\frac{1}{2}$  mi. Sr. Rd. #2 \$435.08, Total \$23,268.99.



I hereby certify that the above and foregoing is a true and correct copy of the original assessment of the Arkansas-Louisiana Pipeline Company for the year 1933, said above itemized taxes being paid by said company under date of January 12th, 1934.

This 6th day of September, 1934.

Milton Coverdale, Sheriff and Ex-Officio Tax Collector, Parish of Ouachita, Louisiana, by C. D. Meredith, Deputy.

[fol. 79]

EXHIBIT 5 TO AFFIDAVIT

Arkansas Louisiana Pipe Line Company

Shreveport, Louisiana, Box 1734

J. C. Hamilton, Agent

35 acres. In N. E. corner of Section 46, Twp. 20, N. R. 4 East, being 1383 feet along East Bank Ouachita River by 1095.30 feet by 1647 feet bought from Cole as per deed, misc. land	\$5,250.00
4 Acres. In N. W. corner Lot 1 Sec. 31, Twp. 20, N. R. 4 East bought of D. Y. Smith as per deed. Bk. 188-381, Misc. land	1,000.00
Strip of land in Sec. 41 Twp. 19, N. R. 5 E 50 by 100 feet bought of J. W. Parks as per deed, Bk. 190-415 Lot	150.00
148 acres. In Secs. 21, 28, 37 and 38 Twp. 18 N. R. 4 E. Bought of D. A. Breard as per deed Bk. 181-598, misc. land	1,500.00
1 auto	140.00
Compressor Station	688,500.00
10.10 miles 20 in. pipe	184,390.00
1.60 miles 10 in. pipe	10,280.00
3.18 miles 4 in. pipe	6,290.00
.70 miles 3 in. pipe	1,350.00
4.27 miles 4 in. pipe	6,510.00
10 Met. & Reg.	2,000.00
Telephones	1,010.00
10 gas wells	30,000.00
	<hr/>
	\$938,370.00

5¼ mill state tax \$5,395.63, 4 mi. parish tax \$3,753.48, 2½ mi. Dist. Levee 1,562.50, 3 mi. school tax 2,815.11, 2.125 mi. Dist. road tax 1,994.04, 2 mi. Road Main. 1,876.74, 3½ mi. spec. school tax 3,284.30, ½ mi. Court House and jail tax \$469.19, 1 mi. Junior College 938.37, ½ mil. SP. Road tax \$469.19, Total \$22,558.55.

I hereby certify that the above and foregoing to — a true and correct copy of the assessment of the Arkansas Louisiana Pipe Line Company for the year 1932, said above itemized taxes being paid by said Company under date of December 31st, 1932. This the 30th day of August 1934.

Milton Coverdale, Sheriff & Ex-Officio Tax Collector,  
Parish of Ouachita, Louisiana, by C. D. Meredith,  
Deputy.

(Here follows two photolithographs, side folios 80, 81-82)

STATE OF LOUISIANA, PARISH OF OUACHITA

Ward

*One*

No. *5678*

Monroe, La.

*Dec 31 - 1932*

Received of

*Arkansas Louisiana Pipe Line Co.*

Amount of Taxes as itemized for the year 1932 on property described on reverse hereof in accordance with law.

MILTON COVERDALE,  
Sheriff and Ex-Officio Tax Collector.

Ark. La. Pipe Line Co. Ex. 6

5% MILLS STATE TAX	4 MILLS PARISH TAX	POLL TAX \$1.00	5% MILLS County Levy Tax	3 MILLS SCHOOL TAX	ROAD DIST. NO. 1 5% MILLS	ROAD TAX 1 MILLS	County School Tax 5% MILLS
<i>539.63</i>	<i>315.42</i>		<i>156.250</i>	<i>2815.11</i>	<i>1994.04</i>	<i>1876.74</i>	<i>3284.30</i>

80

County School Tax 1/4 Mills	West Monroe Sch. 1 1/4 Mills	PAYMENT TAX 1/4 Mills	County Road 1/4 Mills	MINOR COLLEGE 1/4 Mills	Pub. Road Sch. 1 1/4 Mills	INT. ON TAXES	Other	Grand Total
32430			46919	93857	46919			225080



STATE OF LOUISIANA, PARISH OF OUACHITA

Ward *One*

No 6939

Monroe, La.

*Jan 12 - 1934*

Received of

*Arkansas Louisiana Pipe Line Co.*

Amount of Taxes as itemized for the year 1933 on property described on reverse hereof in accordance with law.

MILTON COVERDALE,  
Sheriff and Ex-Officio Tax Collector.

Ark. La. Pipe Line Co. Ex. 7

54 MILLS STATE TAX	4 MILLS PARISH TAX	POLL TAX \$1.00	2 1/2 MILLS SCHOOL TAX	3 MILLS SCHOOL TAX	ROAD DIST NO 1 3 1/2 MILLS	ROAD TAX 3 MILLS
5003 36	3480 60		2167 85	2610 45	1857 84	1740 30

35 Acres:- In northeast corner section 46 Tp east bank of Ouachita River 1015.60 feet by Cole as per deed. 4 Acres:- In northwest cor bought of D.Y. Smith as per deed. Strip of 1 50 by 100 feet bought of J.W. Parks as per 4 21, 22, 27 and 38 Tp 18 NR 4 E. bought of D.A.

Line Co. Ex. 7

ROAD DIST NO 1 3% MILLS	ROAD TAX 3 MILLS	Special School Tax 5 MILLS	West Monroe Drain No 1 3% MILLS	PARKIN TAX 2 MILLS	Court House and Jail % MILL	JUNIOR COLLEGE 1 MILL	Sub Road Dist 2 % MILL	INTEREST ON TAXES	COST
195.784	1740.30	4350.75			65261	870.15	435.08		

corner section 46 Tp 20 NR 4 E. being 1303 feet along  
 of 1015.60 feet by 1095.30 by 1647 feet bought of  
 - In northwest corner lot 1 section 31 Tp 20 NR 4 E  
 of deed. Strip of land in section 41 Tp 19 NR 3 E.  
 W. Parks as per deed. 148 Acres:- In sections  
 E. bought of D.A. Breard as per deed.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WALTER A. STEWART—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared Walter A. Stewart, who, being by me duly sworn, deposes and says:

That he is, and has for twelve years been, a resident of Shreveport, Louisiana. That he has been employed since December, 1928, by Arkansas-Louisiana Pipeline Company, complainant in the above entitled and numbered cause, and since July, 1931 he has been Chief Clerk of the Gas Accounting Department of the said Company.

The main pipelines, including the 20-inch gas pipeline from Sterlington, Ouachita Parish, Louisiana, to Waskom, Texas, are provided at all points of intake and outlet with measuring meters equipped in many cases with thermometers. These meters carry charts automatically recording amounts of gas passing through such meters and these charts are changed daily, the original charts being received by deponent in connection with his duties. This was true during all of the year ending July 31st, 1933.

From the original meter charts deponent tabulated, during the year ending July 31st, 1933, amounts of gas received and delivered into and from the said 20-inch gas pipeline, and from such original records authorized payment by com-[fol. 84] plainant for all gas received from purchasers and rendered invoices, which were duly paid, for all gas sold from said pipelines.

From the records of complainant, thus kept by deponent and by persons under his immediate supervision, deponent has prepared an exhibit, attached hereto and made part hereof, showing in detail, as to the 20-inch pipeline from Sterlington, Louisiana, to Waskom, Texas, and the line connected thereto at Blanchard, for the year ending July 31st, 1933, the receipt into said line of gas purchased and gas produced from complainant's own wells, and the deliveries from such lines, as well as the points of deliveries. Said exhibit is attached to and made part hereof as "Exhibit 9". All of said information is tabulated on the first page of said

Exhibit, but there is attached thereto detail by months of the facts shown upon the first page of said Exhibit.

As appears in detail from said Exhibit, 96.6% of the gas transported through the said 20-inch pipeline westward from Sterlington was transported out of the State of Louisiana, and sold, either in Texas or in Arkansas, by complainant to purchasers there.

Deponent further says that the statements herein made are statements of fact within his knowledge.

W. A. Stewart.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroncel,  
Notary Public in and for Caddo Parish, Louisiana.  
(Seal.)

[File endorsement omitted.]



[fol. 85]

## EXHIBIT 9 TO AFFIDAVIT

## Arkansas Louisiana Pipeline Company

Statement Showing the Disposition of the Gas in the 20" Line from Munce Station to Waakom, Texas

Year Ending July 31, 1933

	M. C. F.	M. C. F.
Gas production:		
Richland Field.....	1,659,769	
Monroe Field.....	352,628	
Total Gas Production.....		2,012,397
Gas Purchased:		
Dixie Gulf Contract Munce Station....	13,552,359	
Other Purchases.....	2,527,822	
Total Purchases Munce Station.....	16,080,181	
Bellevue Field.....	273,081	
Total Gas Purchased.....		16,353,262
Total Gas Produced and Purchases.....		18,365,659
Other Main Line Sales:		
Delivered to United Gas Public Service Company at Waakom, Texas.....	13,572,418	
Empire Southern Gas Company, Minden, La.....	231,315	
Total Other Main Line Sales.....		13,803,733
Inter Company Sales for Resale:		
Southern Cities Distributing Company, Bernice, Louisiana.....	7,131	
Southern Cities Distributing Company, Dubach, Louisiana.....	5,637	
Southern Cities Distributing Company, Munce Domestic.....	1,200	
Southern Cities Distributing Company, Main Line Domestic.....	8,022	
Total Inter Company Sales for Resale.....		21,990
Delivery to Arkansas Systems:		
Gas Distributed in Louisiana.....	171,196	
Gas delivered out of State to Texas and Arkansas.....	4,173,368	
Total Delivery to Arkansas System.....		4,344,564
Free, Company Used and Unaccounted for Gas:		
Free.....	493	
Company Used.....	276,196	
Unaccounted for Gas.....	81,317†	
Total Free, Company Used and Unaccounted for Gas.....		195,372
Total Disposition of Gas.....		18,365,659

† Red in copy.

## EXHIBIT 9 TO AFFIDAVIT—Continued

[fol. 86]

## Arkansas Louisiana Pipeline Company

## Sales 20" Line—M. C. F.

Year Ending July 31, 1933

	Industrial Sales	Other Main Line Sales		Total Other Main Line Sales
		United Gas Co. Contract	Minden Gas Company	
August.....		1,112,977	.....	1,112,977
September.....		1,101,509	.....	1,101,509
October.....		1,065,218	19,893	1,084,611
November.....		1,106,998	26,789	1,193,787
December.....		1,177,837	35,245	1,213,082
January.....		1,231,287	27,822	1,259,109
February.....		1,234,145	38,158	1,272,303
March.....		1,109,475	27,441	1,136,916
April.....		1,144,141	17,822	1,161,963
May.....		1,065,248	13,252	1,078,500
June.....		1,005,352	12,824	1,108,176
July.....		1,068,231	12,569	1,080,800
Total.....		13,572,418	231,315	13,803,733

## Inter-Company Sales for Resale:

	Bernice	Dubach	Munce Domestic	Main Line Domestics	Total	Arkansas System Delivery
August.....	268	196	40	292	796	223,656
September....	575	171	47	2,142	2,935	363,640
October.....	714	336	88	1,652	2,790	531,605
November.....	971	781	122	798	2,672	736,906
December.....	959	896	212	609	2,676	740,459
January.....	913	824	169	467	2,373	340,646
February.....	897	778	163	456	2,294	414,932
March.....	709	590	182	390	1,821	148,202
April.....	429	369	66	353	1,247	196,827
May.....	275	263	64	260	862	214,714
June.....	217	219	65	306	807	217,301
July.....	204	214	2	297	717	216,676
Total..	7,131	5,637	1,200	8,022	21,990	4,344,564

	Free	Co. Used	Leakage	Total
August.....	9	18,855	7,716†	11,148
September.....	11	23,384	4,957†	18,438
October.....	24	23,099	898	24,021
November.....	40	29,710	10,820†	18,930
December.....	108	33,236	6,859†	26,485
January.....	77	24,275	7,492†	16,860
February.....	36	26,683	7,341†	19,378
March.....	53	18,683	5,595†	13,140
April.....	72	19,229	13,186†	6,115
May.....	30	18,910	7,155†	11,785
June.....	25	19,504	6,036†	13,493
July.....	8	20,629	5,058†	15,579
Total.....	493	276,196	81,317†	195,372

† Red in copy.

## EXHIBIT 9 TO AFFIDAVIT—Continued

[fol. 87]

## Arkansas Louisiana Pipeline Company

Input 20" Line—M. C. F.

Year Ending July 31, 1933

Production	Richland Field	Monroe Field	Total
August.....	72,102	.....	72,102
September.....	245,047	.....	245,047
October.....	350,435	15,480	365,915
November.....	403,212	40,851	444,063
December.....	346,099	37,266	383,365
January.....	190,225	37,653	227,878
February.....	52,649	36,629	89,278
March.....	.....	32,784	32,784
April.....	.....	34,842	34,842
May.....	.....	38,134	38,134
June.....	.....	37,841	37,841
July.....	.....	41,148	41,148
Total.....	1,659,769	352,628	2,012,397

## Purchases:

	Dixie Gulf Contract	Other Monroe Purchase	Total Munroe Purchases	Bellevue Field Purchase	Total Purchase
August.....	1,102,700	135,503	1,238,203	38,272	1,276,475
September.....	1,096,223	124,795	1,221,018	20,457	1,241,475
October.....	1,081,049	177,099	1,258,148	18,964	1,277,112
November.....	1,202,022	287,789	1,489,811	18,421	1,508,232
December.....	1,150,131	432,561	1,582,692	16,645	1,599,337
January.....	1,155,180	217,272	1,372,452	18,658	1,391,110
February.....	1,280,217	321,907	1,602,124	17,505	1,619,629
March.....	1,087,199	164,621	1,251,820	15,475	1,267,295
April.....	1,141,560	166,374	1,307,934	22,376	1,330,310
May.....	1,072,586	167,677	1,240,263	27,464	1,267,727
June.....	1,102,859	168,296	1,271,155	30,781	1,301,936
July.....	1,080,633	163,928	1,244,561	28,063	1,272,624
Total..	13,552,359	2,527,822	16,080,181	273,081	16,353,262

[fol. 88]

## Arkansas Louisiana Pipeline Company

Gas Distributed by Arkansas System in Louisiana, North of Junction  
With 20" Line

Year Ending July 31, 1933

Month	Sales to Inter-Com- pany for Resale	Gas Used By Company		Total Gas Distributed
		Rogers Station	Mills Station	
August —1932.....	3,653	2,932	17	6,602
September —1932.....	3,638	7,967	13	11,518
October —1932.....	5,688	9,630	11	15,338
November —1932.....	10,579	9,513	13	20,105
December —1932.....	14,421	9,310	184	23,915
January —1933.....	11,315	5,091	169	16,575
February —1933.....	13,009	5,384	292	18,685
March —1933.....	9,512	1,030	175	10,717
April —1933.....	7,239	5,829	158	13,226
May —1933.....	4,828	7,702	197	12,727
June —1933.....	4,397	6,178	344	10,919
July —1933.....	3,938	6,812	119	10,869
Total.....	92,217	77,287	1,692	171,196

[fol. 89] IN UNITED STATES DISTRICT COURT.

[Title omitted]

AFFIDAVIT OF ROBERT H. JOHNSTON—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared Robert H. Johnston, who, being by me duly sworn, deposes and says:

That he is and has for four years been a resident of Shreveport, Caddo Parish, Louisiana, during all of which time he has been employed as Chief Gas Dispatcher of Arkansas-Louisiana Pipeline Company, complainant in this cause. Prior to that time deponent was employed at Sterlington, Ouachita Parish, Louisiana, and was in charge of receipts of gas purchased from persons producing same.

As such Chief Gas Dispatcher, deponent is in communication by telephone with the entire gas pipeline system of complainant during the eight business hours of each day; and after business hours is subject to call and often is called in connection with the movement of gas through the Company's pipeline system. Deponent has two assistants and one relief assistant, but is himself on duty at least eight hours in each day. Deponent's duties as such Chief Gas Dispatcher require him to be in constant communication with other employees of the Company at all points of the pipeline system, to be familiar at all times with pressures maintained at all points of the pipeline system, and volumes of gas being [fol. 90] transported through each line in the pipeline system. Deponent's duties fundamentally are to maintain sufficient pressures and volumes of gas in the pipelines to insure deliveries of volumes of gas required in the Company's business at the time such gas is required.

In connection with the 20-inch gas pipeline extending from Munce Compressor Station, in Ouachita Parish, to Waskom, Texas, deponent, in his duties and to meet the requirements of complainant's business, is required to insure the delivery through the 20-inch gas pipeline from Munce Compressor Station of a daily volume of gas ranging, dependent upon season and other requirements, from forty-five million cubic feet of gas per day to eighty-five million cubic feet of gas per day; of the above amount, average daily



deliveries to United Gas Public Service Company, through said line to Waskom, Texas, amount to thirty-seven million cubic feet; the balance of the gas required to be moved through the 20-inch line is delivered at a connection of said 20-inch line to the 16-inch line at or near Blanchard, Louisiana, and is thence transported northward into Texas and Arkansas, and ultimately to various points, such as Texarkana and Little Rock in the State of Arkansas, and other points, such as Atlanta, in the State of Texas.

The gas which is thus required in the Company's business to be delivered into Texas and Arkansas through said 20-inch line can not be delivered from the wells producing in the Monroe and Richland fields without the use of power in the form of compression; gas from wells in the Richland gas field, which is delivered into the 20-inch line, arrives at Sterlington at the compressor station with a pressure averaging about 90 pounds per square inch; gas delivered into said line from the Monroe gas field is delivered at Munce Compressor Station with an average pressure of about 220 pounds per square inch. Gas from neither field could be delivered [fol. 91] through the 20-inch gas pipeline to Waskom or northward into Arkansas, in amounts sufficient to meet the requirements of the Company's business, without the use of compression in order to increase the pressure of such gas in the 20-inch pipeline. If the gas from the Monroe field should be placed in the 20-inch pipeline without the use of compression it would be impossible to put through the line more than approximately twenty-five or thirty million cubic feet per day at the required pressures; and no part of the gas from the Richland field could be transported through the said line while same was connected with wells from the Monroe field at 220 pounds per square inch pressure.

It is necessary, in order to deliver gas through the 20-inch line at pressures and in volumes sufficient to meet the requirements of the Company's business, to maintain a pressure in said 20-inch line at Sterlington at approximately from 275 pounds per square inch to 450 pounds per square inch, dependent upon volumes of withdrawals at various points. The maintenance of such pressures at Sterlington, in order to meet the requirements of the Company's business, make it impossible to deliver any amounts of gas whatever from wells, whose rock pressure is less than the pressure in the gas pipeline, without the use of engines and com-

pressors at the points of intake. All of the gas produced in the Richland gas field is produced at pressures less than 275 pounds, so that none of said gas can be delivered into the 20-inch line, herein referred to, without the use of power in the form of compression where the said line has pressures sufficient to meet the requirements of the Company's business; there are also in the Monroe gas field many wells with working pressures so low that the gas from such wells could not be utilized and delivered into the said 20-inch line without the use of compression for the reasons herein mentioned. Munce Compressor Station is some twenty-five miles from wells in Richland Parish gas field, and pressures of the gas upon arrival at Munce Station from that field are lower than working pressures at the wells, and this fact likewise requires the use of additional compression in order to deliver [fol. 92] gas produced in the Richland field into the complainant's line.

The Munce Compressor Station mechanically consists of ten 1,000 horsepower Cooper Bessemer gas burning engines, directly connected to ten gas compressors; in order to maintain required pressures in the 20-inch gas pipeline herein referred to, deponent, as complainant's Chief Gas Dispatcher, from time to time directs the use of more or less of the power available from such engines and pumps at Munce Station; the amount of power and consequent compression necessary at the Munce Station depends upon the pressures at which gas is received, and the amounts and pressures at which gas is withdrawn from the line at various points, and deponent from time to time, as herein stated, directs the use of more or less power at Munce Station to meet conditions as they arise. During the period ending July 31st, 1933, the average number of such pumping units required for the purpose of delivering gas for the requirements of the Company's business, was from three to four pumps; to meet unusual requirements or lowered intake pressures on some occasions five, or even six pumping units were required. The balance of said pumping units were maintained as standby equipment, but all of the pumps are used approximately the same number of hours in order to equalize wear and depreciation. The additional unused capacity of the station is also maintained in order to have available sufficient power to meet the needs of the Company's business when working pressures in the Monroe and Richland fields fall to

an extent sufficient to require additional compression. On one occasion, during the year ending July 31st, 1933, seven of such pumping units were in use at the same time, and that was the only occasion when as many as seven pumps have been used at one time. The use of seven pumps at that time was necessary because of an emergency created by accidental breaking of gathering lines in the field and the consequent lowering of intake pressures of gas from the wells remaining connected to the gathering system on account of heavy withdrawals of gas.

During the year ending July 31st, 1933, all of the gas which was delivered into complainant's 20-inch gas pipeline at [fol. 93] Sterlington was compressed by the pumps at Munce Compressor Station.

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge; and the facts herein detailed as to conditions all refer to conditions existing during the year ending July 31st, 1933.

Robert H. Johnston.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroncel,  
Notary Public in and for Caddo Parish, Louisiana.

[File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. H. BUCKLEY—Filed November 17, 1934

Before me, P. L. Perroncel, Notary Public in and for Caddo Parish, Louisiana, at Shreveport, in Caddo Parish, Louisiana, in the Western District of Louisiana, on this 17th day of November, 1934, appeared W. H. Buckley, who, being by me duly sworn, deposes and says:

That he has resided in Caddo Parish, Louisiana, since 1911 and in Shreveport since 1927; during all of that time he has been employed in the gas business by Arkansas-Louisiana Pipeline Company, complainant in this cause, or by the corporations to which it is successor. Until 1926

deponent was in compressor station and construction work; at all times since 1928, he has been superintendent of complainant, in direct charge of all gas production, pipe lines, gas transportation, compressor stations and pipe line sales (that is, wholesale gas sales).

During the year ending July 31st, 1933, the gas properties of Arkansas-Louisiana Pipeline Company consisted of producing leases and gas wells in the Richland and Monroe gas fields, in the Bossier Parish gas field, Caddo Parish gas field, Webster, DeSoto, and Panola County, Texas, and in the gas fields of Johnson County and Pope County, Arkansas. The Company has field gathering systems, in all of the gas fields mentioned, connected with the main pipelines owned by the Company. The largest pipeline [fol. 95] owned by the Company is the 20-inch gas pipeline extending from Munce Compressor Station (where it is connected to the field gathering systems) to a point very near the Louisiana-Texas line, from whence it continues to Waskom, Texas, as two 16-inch pipelines. At or near Blanchard, Louisiana, there is connected to the said 20-inch pipeline a 16-inch pipeline extending northward through Caddo Parish into Arkansas; branching from said line in Caddo Parish and extending into various points in Texas are pipelines serving various communities in East Texas. Said line extends onward into Arkansas, carrying gas to Texarkana, Arkansas and Texas, and on to Little Rock, transporting gas there and also to intermediate points. The Company also owns and operates various other pipeline systems. There is attached to and made part of this affidavit, marked "Exhibit 8", a map showing the 20-inch pipeline and connecting lines herein mentioned.

At the point of origin of said line in Ouachita Parish, at Sterlington, is Munce Compressor Station. Munce Compressor Station consists, mechanically, of ten 1,000 horsepower gas burning Cooper Bessemer engines directly connected to ten gas compressors; in addition, there are buildings to house the machinery, employees' homes, machine shop and incidental buildings, and two 250 horsepower gas burning engines directly connected to electric generators. The whole is situated on a tract of about thirty-five acres of land.

The 20-inch gas pipeline is one of the largest in the gas fields of the Southwest; it was constructed beginning in 1929 in order to have a capacity sufficient for delivering to



the Shreveport area served by complainant, into Texas to meet contracts between complainant and purchasers there of gas, and into the Arkansas pipeline, a quantity of gas from the Monroe and Richland fields sufficient to meet the known and immediately anticipated needs of the Company's business at the points mentioned. Gas in sufficient quantity to meet the requirements of the Company's business at the points mentioned will not flow through the 20-inch line and Arkansas system without the maintenance of a [fol. 96] pressure at the origin of the line, in Ouachita Parish, of from 275 pounds to 450 pounds per square inch. At no time since 1931 has it been possible, on account of increased requirements of complainant's business and decreased well pressures in the Monroe and Richland fields, to maintain such required pressures in the 20-inch line without the use of from three to six of the engines and compressors at Munce Station.

At the time of the construction of said station, it was planned and built with pumping capacity in excess of that then needed. The ten engines and compressors were installed when only a part were then necessary; the excess pumps were installed in order to have at all times stand-by equipment to meet emergencies caused by breakdown of part of the equipment or by extremely unusual demands; to meet anticipated increased demand; and in order to have available sufficient pumping capacity to meet the situation which would result from the decreased well pressures in the Monroe and especially in the Richland fields which it was then known would shortly follow.

During the year ending July 31st, 1933, there were put in said 20-inch line at Sterlington approximately eighteen billion cubic feet of gas, all of which was pumped by the compressors at Munce Station. Of this amount, approximately four billion cubic feet were produced by complainant from its own wells and fourteen billion cubic feet purchased. All of this gas was transported westward through the 20-inch pipeline and approximately thirteen billion cubic feet were delivered to United Gas Public Service Company, at or near Waskom, in the State of Texas, with which company complainant has a contract for the sale of gas at Waskom, and the United Gas Public Service Company paid to complainant the purchase price of that gas. About four billion cubic feet were delivered at or near Blanchard, Louisiana, to the connection with the 16-inch

pipeline, and most of said gas transported into Texas and Arkansas for the use of the Company's business in those [fol. 97] States. Small amounts, compared to the total transported through the line, were used at Munce Compressor Station, delivered to Bernice and Dubach distribution systems, to Minden, Louisiana, to purchasers there, and other small amounts distributed in the northern part of Caddo Parish.

Without the use of the 20-inch line and engines and compressors at Munce Station herein described, complainant could not meet the requirements of its contract to deliver gas to United Gas Public Service Company at Waskom, Texas, nor would it have a sufficient amount of gas to meet the requirements of its business in its Arkansas pipeline system; this was true during the whole of the year ending July 31st, 1933.

Since, in order to meet the requirements of the Company's business at various points of delivery on the 20-inch pipeline, it is necessary to maintain pressures in the line at Sterlington at from 275 pounds to 450 pounds per square inch, the operation of the engines and compressors at Munce Station is necessary from the viewpoint of the production of gas from wells, and utilization of the allowable production of such wells as fixed by the Louisiana Conservation Commission for the following reasons, namely: some of the wells delivering gas into the line at Sterlington have pressures less than pressures necessarily maintained in the line; no gas from such wells could be delivered into the line without the use of engines and compressors. Further, as to wells with pressures only slightly in excess of line pressures, only comparatively small amounts of gas can be delivered into the line. Furthermore, the gas compressors maintained working pressures in the field gathering systems at figures lower than would otherwise obtain; without such use of the gas compressors to maintain lowered pressures in the gathering systems (brought about by pumping gas out of the gathering system into the main pipeline) low pressure wells would be unable to produce and deliver gas into the gathering system on account of the high pressure which would then be maintained in the field [fol. 98] gathering system by the high pressure wells connected thereto; such low pressure wells, which, through the use of the compressors are commercially profitable to operate, would otherwise have to be abandoned. This situation

obtained in the wells from which complainant took gas into the 20-inch line at Sterlington in the year ending July 31st, 1933.

Deponent further says that the statements made in this affidavit are statements of fact within his knowledge.

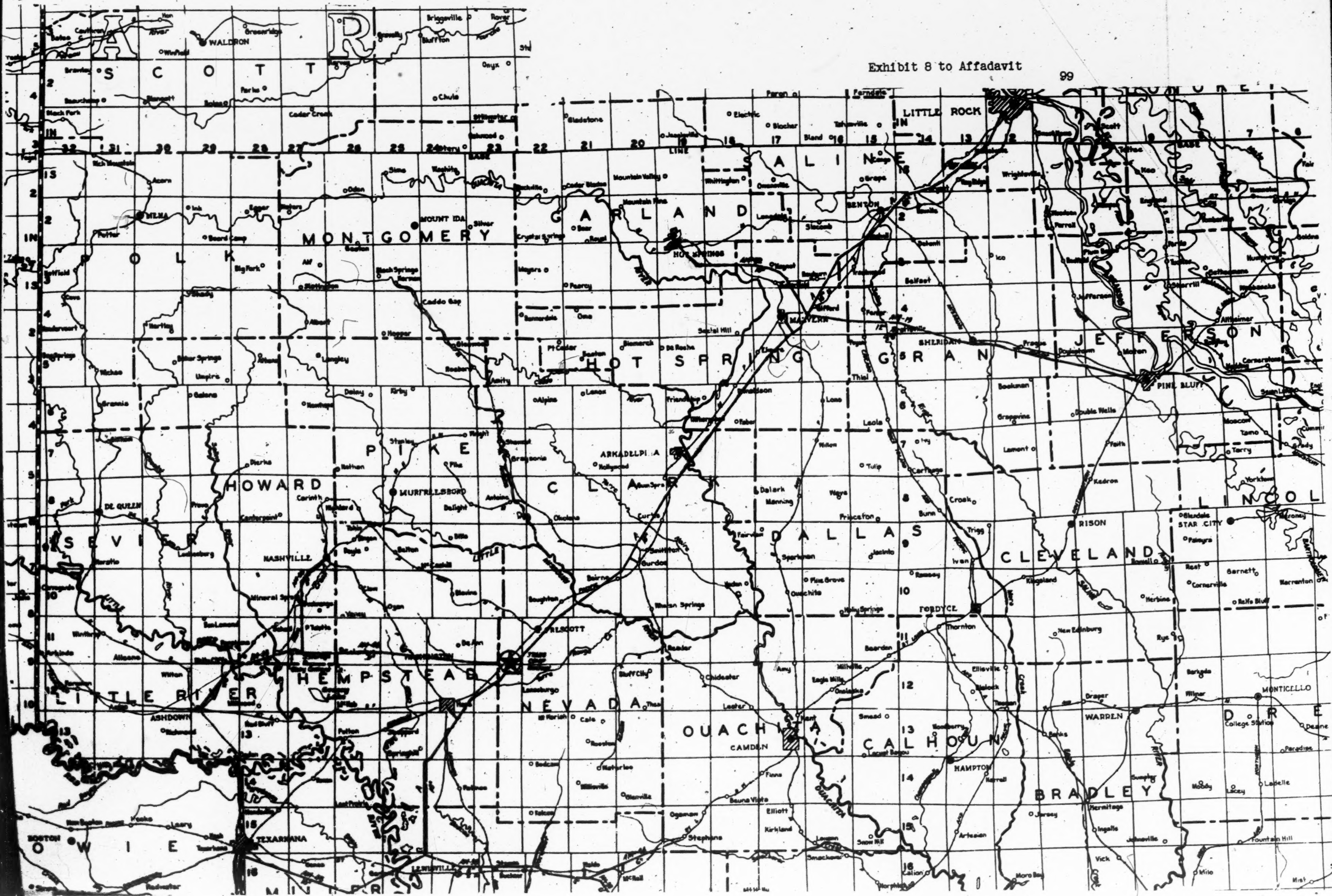
W. H. Buckley.

Sworn to and subscribed before me, Notary, on this the 17th day of November, 1934. P. L. Perroncel,  
Notary Public in and for Caddo Parish, Louisiana.  
(Seal.)

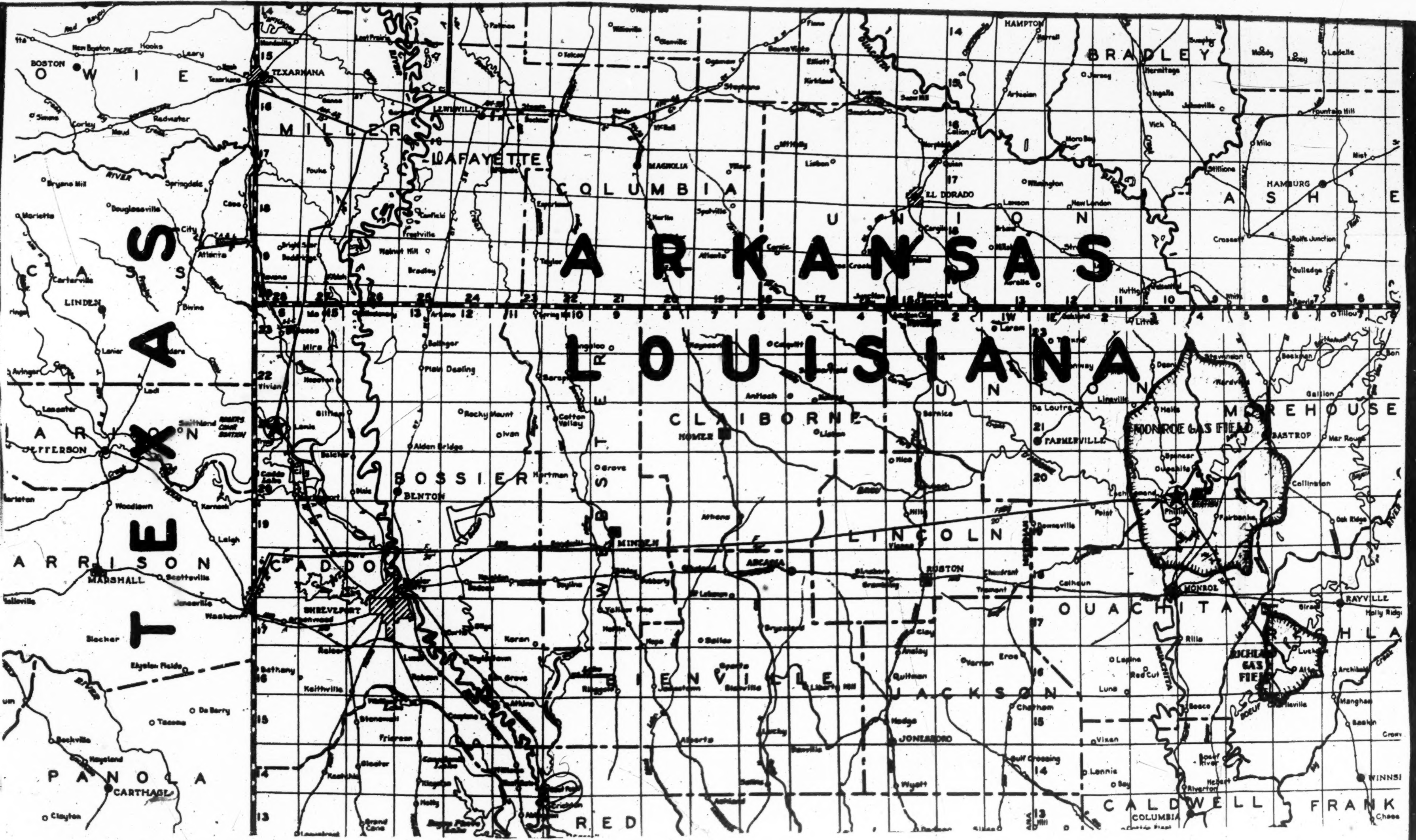
[File endorsement omitted.]

(Here follows one photolithograph, side folio 99.)











[fol. 100] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. B. SINGLETARY, JR.—Filed February 12,  
1937

Before Me, the undersigned authority, personally came and appeared A. B. Singletary, Jr., who, after being duly sworn, did depose and say:

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1932, majoring in engineering. I am thoroughly familiar with the make-up and operation of internal combustion engines, including internal combustion gas engines, technically known as prime movers. I am also familiar with all phases of operation and construction of compressor units, used in compressing gas, and am also familiar with the various methods of transmitting mechanical energy after it has been manufactured.

I have on two occasions visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipeline Company located at Sterlington, Louisiana, and have carefully examined all the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, and other equipment referred to herein.

Attached hereto and made a part hereof, marked "Exhibit A" for the purpose of identification, is a photograph [fol. 101] showing the same type of equipment used by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station". On said photograph are shown three separate and distinct units. Marked by Roman Numeral III is the internal combustion gas engine unit; marked by Roman Numeral I is the compressor unit; and marked by Roman Numeral II is the power transmission unit. All of these units are identical with the units owned and operated by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station", with the exception that the said units at the "Munce Compressor Station" are larger, that is, the internal combustion gas engine units are larger, the compressor units are larger, and, of course, the power transmission units are larger to take care of the increased mechanical power which is generated and manufactured by

the internal combustion gas engine units and which is transmitted through the power transmission units to the compressor units which use or consume said mechanical power.

On said photograph, marked "Exhibit A" for the purpose of identification, I have detailed the lettering and legend of the principle parts that make up the internal combustion gas engine unit, the parts making up the power transmission unit and the parts making up the compressor unit. Each of these units is separate and distinct insofar as its duties and functions are concerned.

The internal combustion gas engine unit marked by Roman Numeral III, on said photograph, is a unit separate and distinct in itself and complete in itself. It is bolted down to a concrete foundation at the "Munce Compressor Station" and has a permanent situs at said station, in the Parish of Ouachita, State of Louisiana.

This internal combustion gas engine unit is known as a "prime mover" and is used in generating and manufacturing mechanical power. By the use of said internal combustion gas engine unit, heat energy, which is contained in the natural gas used as fuel, is changed into mechanical energy. This changing of heat energy of natural gas into [fol. 102] mechanical energy is a manufacturing process and takes place in the following manner:

As the engine piston marked M, on said photograph attached hereto and marked "Exhibit A" for the purpose of identification, moves from the position marked L to the position marked L', in the engine cylinder, a charge of natural gas and air is drawn into the engine cylinder through the gas intake valve marked O. On the return of the engine piston to the position marked L, this charge of gas and air is compressed, and just before reaching the point marked L, is ignited by an electric spark. The subsequent burning of this charge of gas and air in the engine cylinder forces the engine piston marked M back to the position marked L'; this is the stroke of the piston wherein the heat energy contained in the natural gas is converted into mechanical energy and this mechanical energy which has been imparted to the piston is transmitted by the piston rod marked K to the point of power take-off marked G. On the next stroke of the engine piston from the point marked L' to the point marked L, the burned gases, resulting from the burning of



the charge of gas and air, are expelled from the engine cylinder through the exhaust valve marked N. From this point a similar cycle of operations occurs on the opposite side of the piston marked M. In the engine cylinder, marked I, two similar cycles of operations occurs as above described for the engine cylinder marked I', each power stroke of the piston in each cylinder imparting mechanical power to the piston rod marked K, henceforth to the point of power take-off marked G. The function of the large fly-wheel marked F is simply to smooth the power impulses imparted by the piston, thereby giving an even or steady motion to the entire internal combustion gas engine unit.

The mechanical energy generated and manufactured by the internal combustion gas engine unit is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

The operation of the above described internal combustion gas engine unit, which generates and manufactures mechanical energy, is entirely independent and separate from the operation of the transmission unit shown in said photograph and marked by Roman Numeral II, and is also entirely independent and separate from the operation of the compressor unit shown in said photograph and marked by Roman Numeral I.

Marked by Roman Numeral II, on said photograph, is shown the power transmission unit. The function of this unit is to transmit the mechanical power, generated and manufactured by the internal combustion gas engine unit, from the point of power take-off, marked G on said photograph, to the compressor unit marked Roman Numeral I, which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit.

Mechanical power, such as is manufactured by the above described internal combustion gas engine unit, could be transmitted to the compressor unit which uses it by any of the common means of power transmission, such as, belting, chains, shafting, etc.

Marked by Roman Numeral I, on said photograph attached hereto and marked "Exhibit A" for purposes of identification, is shown the compressor unit, which unit uses the mechanical energy or power generated and manufac-

tured by the internal combustion gas engine unit after said mechanical energy or power has been transmitted to it by the above described power transmission unit. This compressor unit performs a dual purpose. It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells, compresses it and changes the condition of the gas from one [fol. 104] pressure to a higher pressure thereby allowing the gas to be delivered into the main pipeline of the Arkansas-Louisiana Pipeline Company as withdrawals are made at the opposite end of the line. This suction and compression of gas takes place in the compressor unit in the following manner:

The mechanical energy obtained from the internal combustion gas engine unit, through the power transmission unit, is in the form of a forward and backward motion. This forward and backward motion causes the compressor piston marked C in the photograph to move from the position marked B to the position marked B' in the compressor cylinder. When the compressor piston marked C moves from the position marked B to the position marked B', a suction is created in that part of the compressor cylinder marked B which suction draws the gas from the feeder lines of the field gathering system into the compressor cylinder. The return of the compressor piston from the point marked B' to the point marked B compresses this gas in the compressor cylinder to a higher pressure and said gas is delivered through the gas outlet marked D into a pipe leading to the cooling system at the "Munce Compressor Station". A similar cycle of suction and compression occurs on the opposite side of the compressor piston in the compressor cylinder marked B'.

Mechanical power or energy is necessary to the operation of any compressor unit.

There are three common methods of manufacturing mechanical power or energy which is necessary to operate compressor units. First, the method used at the "Munce Compressor Station", whereby an internal combustion gas engine unit is used to convert heat energy of natural gas into mechanical power or energy; second, the use of an electric motor which converts or manufactures electrical energy into mechanical energy; third, the use of a steam engine which converts or manufactures heat energy of steam

into mechanical energy. In each case a new and distinct form of energy results from a manufacturing process; that is, changing one type of energy into mechanical energy and [fol. 105] in each case this new product is capable of transmission and use in industry.

With the equipment appearing in said photograph, the Arkansas-Louisiana Pipeline Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy contained in the natural gas used as fuel, into mechanical energy, which is manufacturing. This manufacturing process is intrastate in character and is comparable and similar in every detail in this respect to other plants in Louisiana manufacturing power, such as electric power plants, etc. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting said mechanical energy, after said mechanical energy has been produced or manufactured. Third, by the use of the compressor unit, marked Roman Numeral I, it is using mechanical energy after it has been manufactured and transmitted.

The word "power", as used by engineers, indicates energy under human control and available for doing work. The principal sources of power are the muscular energy of man and animal; the kinetic energy of the winds and streams; the potential energy of waters at high levels, of the tides and waves, the heat of the earth and sun; and heat energy derived from the combustion of fuels. The change of one form of energy into another form of energy through the medium of an engine, or other type of prime mover, is manufacturing. The heat energy contained in fuels is one form of energy and the mechanical energy resulting from the combustion of fuels in an internal combustion engine is another form of energy, having entirely different properties from the heat energy of fuels. This mechanical energy resulting from the combustion of fuels in an internal combustion engine is capable of measurement by the use of formulas recognized by engineers and the unit of measurement is called horsepower. The horsepower of internal [fol. 106] combustion gas engine units, such as involved in the present suit, and used by the Arkansas-Louisiana Pipeline Company, at its "Munce Compressor Station", is measured in the following manner:

The internal combustion gas engine unit is first run under no-load, that is only a quantity of natural gas and air is admitted to the engine cylinder necessary to run the engine at its normal speed without any connected load. At this condition of no-load, an indicator card is taken at each combustion chamber of the engine from which the mean effective pressure for each combustion chamber is computed, and from this an average mean effective pressure is computed for all combustion chambers. Having the effective area of the engine piston in square inches, the length of stroke of the engine piston in feet and the number of revolutions per minute, the indicated horsepower of the engine at no-load is computed by substituting the above values in the formula:

$$\text{I.H.P.} = \frac{A \times P \times S \times N}{33,000} \times C$$

Where: I.H.P. = Indicated horsepower

A = Effective area of the engine piston in square inches

P = Average mean effective pressure in pounds per square inch

S = Length of stroke of piston in feet

N = Number of power strokes per minute

C = Number of combustion chambers

The engine is next run under full load; that is, all the load the engine will stand without the speed of the engine falling off below a certain point. The same procedure, as above described, is then followed and the indicated horsepower again computed. The actual brake horsepower of the engine is then the difference between the horsepower computed for full-load and for no-load. Before any internal combustion engine is sold, tests are run by the manufacturer to determine what the maximum brake horsepower of said [fol. 107] engine is at normal speed and the manufacturer then gives a brake horsepower rating to said engine not to exceed the brake horsepower the engine is proven capable of manufacturing or producing.

It is evident that the brake horsepower of internal combustion gas engine units, such as used by the Arkansas-Louisiana Pipeline Company, is determined solely by reference to the internal combustion gas engine unit. The



power transmission unit and the compressor unit have nothing whatever to do with the determination of said brake horsepower. In other words, the brake horsepower rating of the internal combustion gas engine units is the amount of power that is generated or manufactured by changing the heat energy of the fuel, natural gas, into mechanical energy.

Prior to the discovery of electricity, the principal uses of mechanical power, manufactured by internal combustion engines, were for driving shafting, pumps, compressors, hoists, and the like. Since the discovery of electricity, it has often been found more economical to manufacture mechanical energy at one place and then convert this mechanical energy into electrical energy. The electrical energy is then transmitted over wires to the place mechanical power or energy is needed. In such a case, some form of natural energy, such as the heat energy of fuels or the potential energy of water at high levels is, by the use of a prime mover, converted or manufactured into mechanical energy and the mechanical energy converted or manufactured by the use of electric generators into electrical energy and the electrical energy transmitted over wires to the point where the mechanical energy is needed. The electrical energy is then converted into mechanical energy by the use of electric motors.

There are many instances, however, in present day engineering where mechanical energy is transmitted long distances through rods. In such cases, through the medium of internal combustion engines, usually gas or gasoline [fol. 108] engines, heat energy is manufactured into mechanical energy. This mechanical energy is transmitted through rods for long distances where it is finally used to operate pumps, compressors, and other mechanical units that require mechanical energy for operation. A good example of this is in the oil fields in Caddo Parish, Louisiana. In said fields, where oil companies own numerous wells which require pumping, and which wells do not flow of their own accord, the company will, at some central location, establish an internal combustion gas engine unit operating on the same principle as the internal combustion gas engine units owned and operated by the Arkansas-Louisiana Pipeline Company at the "Munce Compressor Station". Through the medium of this internal combustion

engine unit, heat energy is converted into mechanical energy. The mechanical energy, manufactured by the engine, is then transmitted, from the point of power take-off of the engine, first from the engine to a large wheel and from said large wheel to several long rods which are connected to pumping units at the oil wells. These pumping units are often located as far as one-half mile from the engine manufacturing the mechanical power. Many wells can thus be pumped by the mechanical power manufactured by one internal combustion engine.

The point I am making is that the method of operation at the "Munce Compressor Station" is similar to the operation in the Caddo field, above referred to. While the mechanical energy or power is not transmitted in exactly the same manner, the medium of transmission in each case is rods and the principle involved is identical. In other words, the internal combustion gas engine unit, technically known as the prime mover, which is permanently fixed to concrete at the "Munce Compressor Station", manufactures and generates mechanical power by changing heat energy into mechanical energy. Said mechanical energy or power is, through the medium of rods, transmitted or carried to the [fol. 109] compressor unit, and operates said compressor unit. The compressor unit could be at a point a far distance from the internal combustion gas engine unit, and under such condition the transmission rods would necessarily have to be of sufficient length to reach the compressor, or the same power, or mechanical energy, could be used to operate several compressor units, or a pump, or any other machinery requiring mechanical power or energy.

If the internal combustion gas engine unit, known as the prime mover, was situated in Louisiana, and bolted down to concrete in Louisiana, say for example, at the "Munce Compressor Station", and the compressor unit was situated in the State of Mississippi or Alabama, and through a medium of rods, the mechanical energy and power generated and manufactured by the internal combustion gas engine unit, was transmitted and conveyed to said compressors located in Mississippi or Alabama, the transmission of said mechanical energy or power through the rods would be across the State lines and would be interstate commerce. The generation or manufacturing of the mechanical energy or power, however, would be local in character. In other

words, the same situation would exist, in principle, as if the internal combustion gas engine units were connected to electric generators, which generated electrical energy and said electrical energy was transmitted through a system of wires to the States of Mississippi or Alabama and used by an electric motor to operate a compressor.

The mechanical energy or power generated and manufactured by the internal combustion gas engine units at the "Munce Compressor Station" could very readily and very easily be used to operate an electric generator instead of a compressor, by merely attaching a generator where it could utilize the mechanical energy or power rather than the compressor. Then, the situation would be that heat energy is manufactured into another product, namely, mechanical energy or power, and this product would, in turn, be manufactured into electrical energy.

The manufacture and generation of mechanical power is one thing, and the consumption or use of that power is another, and the transmission of that mechanical energy or power to the point of consumption is a thing distinct from its manufacture or generation and its consumption. In other words, at the "Munce Compressor Station" there is, first, the manufacture or generation of mechanical power. The next step is its transmission, and the next step is its consumption or use. These three steps are entirely separate and distinct, and have no connection other than, before the mechanical energy or power is transmitted, it must be manufactured or generated, and before it can be consumed or used, it must be manufactured or generated, and transmitted from its place of manufacture or generation to the place where it is to be utilized.

Attached hereto and made a part hereof, marked Exhibit "B", for the purpose of identification, is a copy of a map furnished me by the Arkansas-Louisiana Pipeline Company. Said map shows the field-gathering lines which connect with the gas wells owned by the Arkansas-Louisiana Pipeline Company, which are used for the purpose of gathering the gas from the place of severance from the ground, and collecting it and carrying it to the site of the "Munce Compressor Station". Also, shown on said map, in symbols, are the Munce Compressor Station, the Separators, the Cooler, Check Meter and other equipment referred to herein, as well as the terminus of the 20-Inch main pipeline into which the

gas is loaded and is started on its interstate journey to Texas and Arkansas.

Shown on said map are the field-gathering lines in the Monroe and Richland Gas fields, connected to wells owned by the Arkansas-Louisiana Pipeline Company. This system of gathering lines is made up of small lines leading out [fol. 111] to the various wells owned by said complainant, and is the means by which the gas is gathered up and carried to the edge of the producing properties, where it is treated, measured, compressed, and loaded into the interstate carrier, as described elsewhere in this affidavit.

As explained in the affidavit of W. H. Buckley, introduced by complainant as evidence in the preliminary hearing in this cause, the operation of the compressor units at the Munce Compressor Station are necessary from the viewpoint of the production of the gas from wells, and the utilization of the allowable production of such wells, as fixed by the Louisiana Department of Conservation, for the following reasons:

Some of the wells delivering gas into the field-gathering lines have lower pressure than others, and were all of the wells allowed to flow under their own pressure into the field-gathering lines, the low pressure wells would not be able to produce, and by use of the compressor units, which draws the gas out of the field-gathering lines, the pressure in the field-gathering lines is lowered to such an extent that all of the wells can be regulated to produce their allowable production, as fixed by the Louisiana Department of Conservation.

At the points marked "Terminus of other Field Gathering Lines", on said map, are connected similar field-gathering lines which deliver gas purchased by the Arkansas-Louisiana Pipeline Company from owners of other wells. These other field-gathering lines, although not shown on said map, perform the same function as the lines of the Arkansas-Louisiana Pipeline Company, that is, they gather the gas from the various oil wells and deliver the gas to a central point on the edge of the gas producing properties, where it is treated, metered, compressed, cooled, check metered and loaded into the interstate carrier.

After the gas has been gathered by the field-gathering lines and delivered to the central point on the edge of the producing properties, which is called the Munce Compressor



Station, it then passes through the metering stations at said central point, and is metered. The gas belonging to complainant, produced from complainant's wells, and gathered [fol. 112] into complainant's field-gathering system, and brought to said central point, known as the "Munce Compressor Station", is metered at said central point in order that complainant might know the amount of gas that is delivered into the interstate main at the central point, produced by complainant's wells. The other field-gathering systems, owned by other companies, which gather gas from wells owned by such other companies and delivered to said central point, is metered at said central point for the purpose of determining the amount of money due said companies by the Arkansas-Louisiana Pipeline Company for the gas purchased. This gas purchased from other companies, at the central point marked "Munce Metering Station" on said map, after it is gathered from the wells in said system of feeder or gathering lines, is supposed to be merchantable gas, that is, it should contain no water or gasoline in either liquid or vaporous state, but this gas does contain this water and natural gasoline, and in such condition is not merchantable. At the point marked "Separator", on said map, prior to the passage of the gas through the meters at the point marked "Munce Metering Station", on said map, are found separators, used for the purpose of removing this water and natural gasoline. Only one of these separators is shown on said map and marked "Separator." However, at the time I visited the plant, called the "Munce Compressor Station", I was shown such a separator installed in each field-gathering line leading to the metering station, by the Superintendent in charge of the Munce Compressor Station. These separators were installed some fifteen or twenty feet from the meters, marked "Munce Metering Station" on said map. These separators are so constructed so as to retard the velocity of flow of the gas, and consist of a large steel vessel, in some cases, equipped with "Baffles". The gas enters the vessel about half-way up from the bottom and leaves at the top, and because of the large size of the vessel, as compared to the line in which the gas enters, the velocity of flow of the gas is greatly diminished, and it is this diminution in the velocity of the flow of the gas, which [fol. 113] causes the water and natural gasoline vapor contained in the gas, to settle to the bottom of the vessel or

separator, where it can be blown out when a sufficient quantity has accumulated. This is the first step taken at the "Munce Compressor Station" to change the unmerchantable gas to merchantable gas.

The gas, after passing through the metering station, shown on said map, enters the three large lines, shown on said map as "Lines Connecting Metering Station With Headers", and from these lines the gas goes into two lines marked "Headers" on said map. The gas, in entering the "Headers" again has its velocity or flow retarded, and more water and natural gasoline settles to the bottom of the Headers, where it can be blown out. This is the second step taken by the complainant at the "Munce Compressor Station" to change the gas from an unmerchantable product to a merchantable product. After leaving the "Headers", the gas reaches the compressor units, shown on said map as the "Munce Compressor Station". The action of the compressor units in compressing the gas raises its temperature from about 78 Degrees to 225 Degrees F. The hot gas, upon leaving the compressor units, flows to the unit marked, "Coolers" on said map, where the temperature of the gas is reduced from 225 Degrees to about 80 Degrees F. It is necessary that the temperature of this gas be reduced for the following reasons:

1. To reduce the velocity of the gas, thereby making it possible to load a larger volume of gas into the 20-Inch interstate line. (Charles Law states that with constant pressure, the volume of a gas varies with its absolute temperature).
2. The preventing of the hot gases from corroding the pipe line.
3. To prevent the hot gases from melting the insulation on the outside of the pipeline.
4. By cooling the gas to prevent expanding and contracting [fol. 114] of the main pipe line, thereby eliminating danger of the line breaking or causing leaks.
5. To further condense and remove the water vapor and natural gasoline contained in the gas, which is another step in an effort to make the gas merchantable.

After leaving the Coolers, the gas then passes through a Scrubber located just ahead of the unit marker, "Check Meter" on said map, which Scrubber removes the remaining

water and natural gasoline from the gas. The installation of this Scrubber was found necessary because the other processes named herein were not removing all of the water and natural gasoline from the gas. The gas then passes through the unit marked, "Check Meter" on said map, where the quantity to be loaded into the main pipe line is measured. After being measured in the Check Meter, the gas is then loaded into the main 20-Inch pipeline, marked "Main 20-Inch pipeline" on said map.

Thus, we find a very intricate system of field-gathering lines, metering stations, Separators, Headers, Cooling towers, Check Meters and Scrubbers, through which the gas handled by the Arkansas-Louisiana Pipeline Company must pass before it is finally loaded into the main 20-Inch interstate line by the compressor units for transportation into Texas and Arkansas.

The term "Munce Compressor Station" which is used by the Arkansas-Louisiana Pipeline Company to refer to its properties at Sterlington, Louisiana, and which term I naturally used herein, is a "misnomer" because at this plant are done more things than the mere compressing of natural gas. First, by the action of these compressor units, gas wells, which would normally not be able to produce the quantity of gas allotted each well by the Louisiana Department of Conservation, are made to produce their maximum allotment. Second, gas which would otherwise be unmerchantable is made merchantable by the use of compressor units coupled with separators, cooling system and scrubbers. Third, by the use of internal combustion gas engine units, the Arkansas-Louisiana Pipeline Company is manufacturing mechanical power or energy, a product having a distinct commercial value. And fourth, by the use of transmission units, mechanical power or energy is transmitted to its place of consumption.

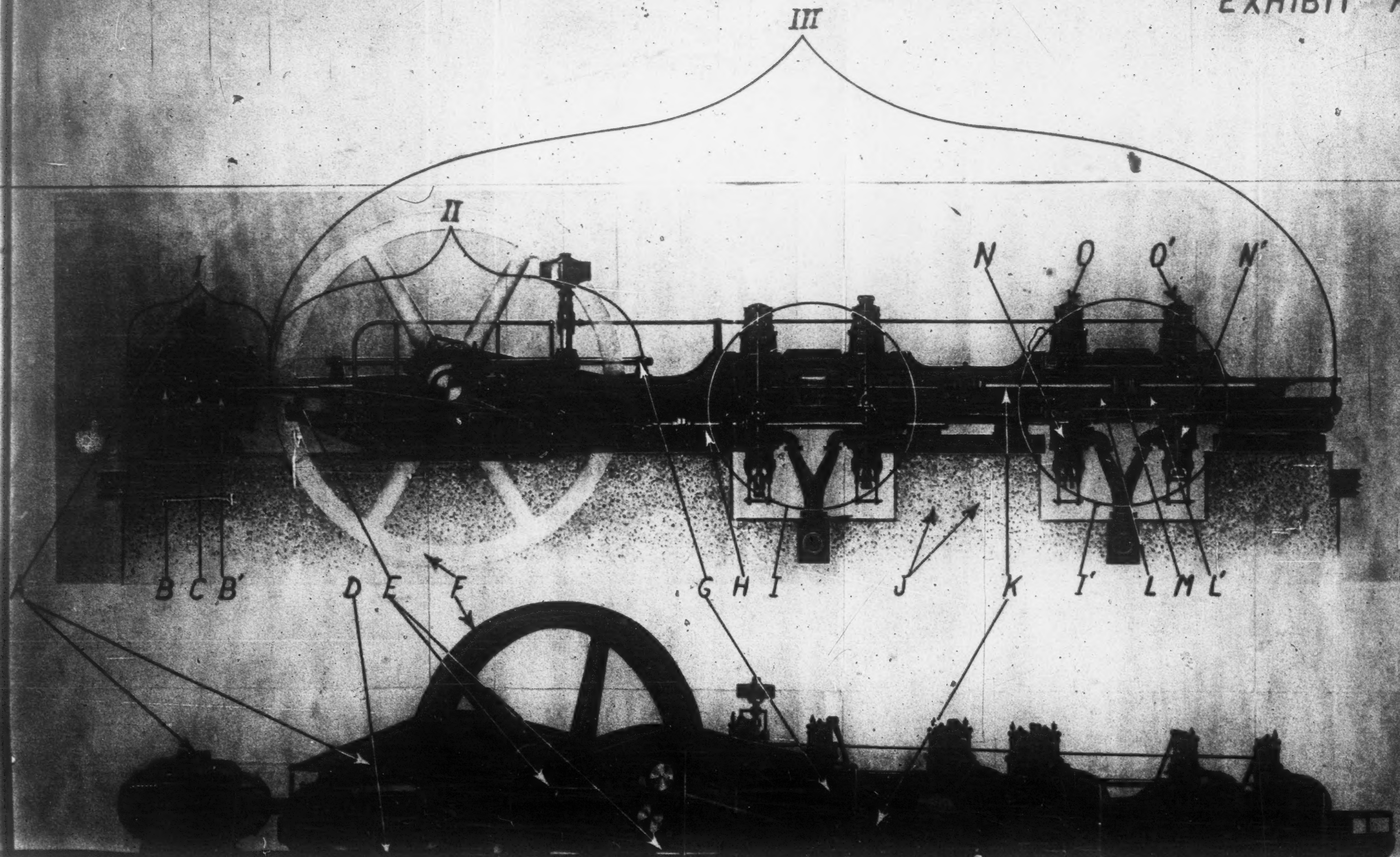
Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

A. B. Singletary, Jr.

Sworn to and subscribed before me, Notary, on this the 15th day of May, 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]









### I COMPRESSOR UNIT

A-Gas Intake (Suction)  
B-Compressor Cylinder  
C-Compressor Piston  
D-Gas Outlet (Discharge)

### II TRANSMISSION UNIT

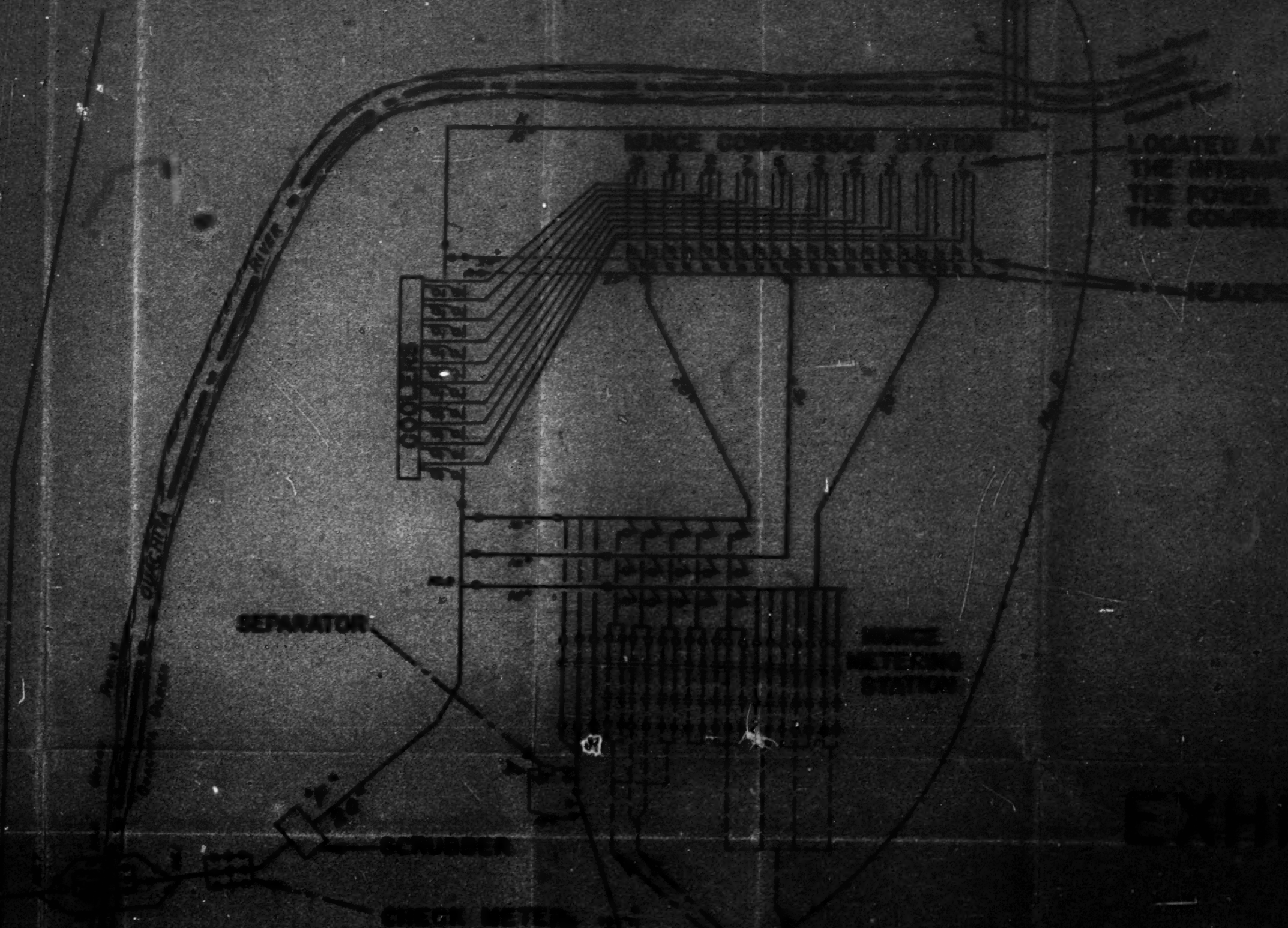
E-Transmission Rods

### III INTERNAL COMBUSTION GAS ENGINE UNIT

F-Flywheel	L-Combustion Chamber
G-Power Take-Off	L'- " "
H-Foundation Bolt	M-Engine Piston
I-Engine Cylinder	N-Exhaust Valve
I'- " "	N'- " "
J-Concrete Foundation	O-Intake Valve
K-Piston Rod	O'- " "



SO RUM LINE DELIVERING GAS TO  
LOUISIANA, TEXAS AND ARKANSAS



EXHIBIT

*Copy 1  
Copy 2  
Copy 3*

LOCATED AT NUMBERS 1 THRU 10 ARE:  
THE INTERNAL COMBUSTION GAS ENGINE UNITS,  
THE POWER TRANSMISSION UNITS,  
THE COMPRESSOR UNITS.

HEADERS

EXHIBIT "B"



CHECK METER

FIELD GATHERING LINES

TERMINUS OF  
GATHER

MONROE

BLACK BAY



OF OTHER FIELD  
GATHERING LINES

FIELD GATHERING LINES



FIELD GATHERING LINE





[fol. 118] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. B. SINGLETARY, JR.—Filed February 12, 1937

Before me, the undersigned authority personally came and appeared A. B. Singletary, Jr., who, after being duly sworn, did depose and say:

That he is the same A. B. Singletary, Jr., who executed the affidavit filed in the above entitled and numbered cause, which affidavit was executed before W. A. Cooper, Notary Public in and for the Parish of East Baton Rouge, Louisiana, on the 15th day of May, 1936.

That he is familiar with the operation of the Ten (10) four cylinder Cooper Bessemer Internal Combustion engines owned and operated by the Arkansas-Louisiana Pipe Line Company, Complainant herein, at its Munce Station, referred to in this litigation, and is also familiar with the operation of the two (2) electric generators propelled by gas burning Internal Combustion engines used to furnish electrical energy for lighting the buildings at the said Munce Station, and that none of said equipment and machinery is stand-by equipment; that all of said equipment is operated approximately the same number of hours per year, and none of it is owned and operated as stand-by equipment, by Complainant herein; that none of said equipment is used only in case of emergency; that all of said equipment is used in manufacturing mechanical power and is used approximately the same number of hours per year, as is shown by the testimony [fol. 119] of Complainant's witnesses.

Affiant further states that he is in direct charge of the administration of the provisions of Act 6 of 1932, as amended, and Act 25 of the Second Extra Session of 1935, as amended by Act 5 of the Fourth Extra Session of 1935, and that it has been the universal policy in administering said Statute to allow exemptions from the tax on the ground that the equipment is stand-by equipment only in such cases that the equipment is maintained and used solely and only in the case of failure of the equipment ordinarily used to manufacture power used in the business.



The statements made herein are within the personal knowledge of affiant.

(Sgd.) A. B. Singletary, Jr., Affiant.

Sworn to and subscribed before me, Notary, on this 8 day of December, 1936. P. W. Dupuy, Notary Public, in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. B. SINGLETARY, JR.—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared A. B. Singletary, Jr., who, after being duly sworn, did depose and say:

That he is the same A. B. Singletary, Jr., who executed, on May 15, 1936, an affidavit in the above numbered and entitled cause, before W. A. Cooper, Notary Public, in and for the Parish of East Baton Rouge, Louisiana, and that he is the same A. B. Singletary, Jr., who executed a supplemental affidavit in the above entitled and numbered cause on the 8th day of December, 1936, before P. A. Dupuy, Notary Public in and for the Parish of East Baton Rouge, State of Louisiana.

Affiant further states that the internal combustion gas engine unit, the transmission unit, and the compressor unit, as shown in Exhibit "A", attached to and made part of his affidavit executed on the 15th day of May, 1936, referred to above, are the same in principal, and are in every respect similar to the internal combustion gas engine units, transmission units, and compressor units, located at the Munce Compressor Station, involved herein, with the exception that the internal combustion gas engine units, transmission units, and the compressor units at the Munce Station are larger, and the horse power rating or horse power capacity [fol. 121] of the internal combustion gas engine units at the Munce Station is greater than the horse power capacity of the internal combustion gas engine unit shown in Exhibit

"A". The transmission of mechanical energy is identical at the said Munce Station with the Exhibit shown in Exhibit "A", and the compressor units are identical at the Munce Station with the compressor unit shown in Exhibit "A", with the exceptions herein above referred to, that is, all three separate and distinct units are larger at the Munce Station than the three separate and distinct units shown in Exhibit "A" attached to affiant's affidavit.

Affiant has read the affidavit of T. W. Johnson, dated December 18, 1936, witness for complainant, wherein the said Johnson makes the following statement:

"\* \* \* that the compressors described and employed at the Munce Compressor Station form an integral part of the pipe line through which natural gas is transported, and the engines used in connection with such compressors are used solely and only to facilitate the movement of natural gas through the pipe lines."

Affiant shows that the compressor unit, marked unit No. "1", on Exhibit "A", is not an integral part of the pipe line, and is used not only to compress the gas and load it into complainant's twenty-inch main at the Munce Station, but is used for other purposes as set out in affiant's original affidavit. The internal combustion gas engine unit, marked internal combustion gas engine unit No. "3" on Exhibit "A", is used solely and only for the purpose of manufacturing mechanical energy by converting heat energy contained in natural gas into mechanical energy, which mechanical energy, in turn, is transmitted to the point of use through the medium of transmission rods, marked transmission unit on Exhibit "A", to the compressor unit, the point of consumption of the mechanical energy.

[fol. 122] The said Johnson further states that:

"Because of the physical design, assembly and type of equipment employed, the energy created by the operation of the engines in use is not susceptible of transmission over any considerable distance and can be used only for the purposes intended or the transmission of the natural gas transported, through the lines of which the compressors form an integral part and the energy created for these reasons cannot be considered to have any commercial value independently of the operation described."

Affiant further states that mechanical energy, after it has been manufactured, is capable of transmission for great distances, and in many cases, is so transmitted.

Affiant further states that mechanical energy is a distinct article of commerce, capable of measurement and sale, and is, at times, measured and sold; affiant further states that the mechanical energy manufactured by the internal combustion gas engine units at the said Munce Station has a commercial value independent of the operation of the compressor units which use said power, just as would the manufacture of electrical energy; in each case, transmission being required to transmit the energy, whether it be mechanical or electrical, to the point of use or consumption.

The said Johnson further states:

"In the operation of compressor units such as those described, no power is generated in the compressor unit except that required to overcome frictional resistance in the unit itself until gas is admitted to the compressor cylinder."

The statement of said Johnson, quoted above, is incorrect. No power is generated in the compressor unit. The compressor unit consumes the mechanical power manufactured by the internal combustion gas engine unit and transmitted to it by said transmission unit. It is elementary that the compressor units do not generate power, but on the contrary, consume power.

[fol. 123] Affiant further shows that H. T. Goss, witness for complainant, in his affidavit, executed on December 18, 1936, stated:

"Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP. Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines."

Affiant further states that for the reason set forth in this affidavit and in his original affidavit, the statement of the said H. T. Goss quoted above is erroneous. Mechanically speaking, three separate and distinct units make up the equipment as shown in Exhibit "A", of affiant's original

affidavit, and these three separate and distinct units do not constitute an integral unit; that the mechanical energy manufactured by the Internal Combustion Gas Engines at the Munce Station can be used to operate any unit requiring mechanical power. It so happens that at the Munce Station, the mechanical power is used to operate compressors.

Affiant further shows that the said H. T. Goss, in said affidavit executed December 18, 1936, makes the following statement:

"The energy created due to the physical design, assembly and type of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder."

This statement by said Goss is not accurate for the reason set forth in this supplementary affidavit and in affiant's original affidavit. Mechanical energy is susceptible of transmission over considerable distances, and is frequently [fol. 124] transmitted over considerable distances as is shown by the records in this case.

Affiant further states that the said H. T. Goss makes the following statement:

"The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome frictional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe lines, which movement to the required degree would be impossible without such power."

Affiant shows that said statement is inaccurate and is not sound from an engineering standpoint. No power whatever is generated in compressor units, marked such, in Exhibit



"A", of affiant's original affidavit. Power is consumed by the compressor units.

A. B. Singletary, Jr., Assistant.

Sworn to and subscribed, before me, this 19 day of January, 1937. W. A. Cooper, Notary Public.  
(Seal.)

[File endorsement omitted.]

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF G. F. MATTHES—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared G. F. Matthes, who, after being duly sworn, did depose and say;

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the School of Engineering of Tufts College in 1922, majoring in mechanical engineering. I have also taken work and pursued studies in engineering at the Massachusetts Institute of Technology. Since 1922, I have been engaged in engineering work, which work has included the design, construction and operation of mechanical plants and power equipment. Also, during the past four years, I have held the position of Assistant Professor in the College of Engineering at the Louisiana State University.

I have read and carefully examined the affidavit prepared by A. B. Singletary, Jr., to be filed in evidence in the above entitled and numbered cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Ster-[fol. 126] lington, Louisiana. I have also carefully examined and studied the photograph attached to said affidavit executed by the said A. B. Singletary, Jr., and marked "Exhibit A", for the purpose of identification, which photograph shows equipment similar to that located at the said Munce Station.

The detailed analysis made of the equipment shown in said photograph attached to said affidavit executed by the said A. B. Singletary, Jr., is correct.

Mechanically, the equipment shown in said photograph attached to said affidavit executed by the said A. B. Singletary, Jr., and marked "Exhibit A" for the purpose of identification, is composed and made up of three separate and distinct units, each of said units performing a separate and distinct purpose, and being entirely separate and distinct from each other insofar as duties and functions are concerned. These three separate and distinct units making up the equipment shown in said photograph attached to said affidavit and marked "Exhibit A" for the purpose of identification are, first, as shown by Roman Numeral I on said Exhibit, the compressor unit. The second separate, distinct and individual unit, is marked by Roman Numeral II, and is known as the transmission unit. The third separate and distinct unit is marked in said Exhibit by Roman Numeral III, and is the internal combustion gas engine unit.

The compressor unit, marked Roman Numeral I on said Exhibit, performs a dual purpose. It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells through said system of feeder lines, compresses it and changes the condition of the gas from one pressure to a higher pressure, building up the pressure so that the gas may be delivered into the main pipe line, and, after having been built up in pressure, moves into the pipe line when withdrawals are made at the opposite end of the line.

[fol. 127] The second separate and distinct unit, marked by Roman Numeral II on "Exhibit A", attached to said affidavit is the power transmission unit. This unit simply connects the unit marked Roman Numeral III in said Exhibit, which unit manufactures and generates mechanical power, with unit marked Roman Numeral I, the compressor unit, which unit uses the mechanical power. It is through the medium of the transmission rods that the mechanical power, after being manufactured by the internal combustion gas engine unit marked Roman Numeral III on said Exhibit, is transmitted to the compressor unit, marked Roman Numeral I on said Exhibit. The said internal combustion gas engine unit transforms heat energy into mechanical energy, which is a manufacturing process. The mechanical energy thus manufactured by the internal combustion gas engine is a new commercial product.

In the equipment appearing in said photograph, this product that is manufactured by the internal combustion gas engine unit is carried or transmitted through the medium of the rods and is consumed or used by said compressor unit. Mechanical power or energy is necessary to the operation of said compressor unit.

The three most common methods of manufacturing mechanical energy to operate compressor units are, first, the method used at the Muncie Station, namely, manufacturing and generating mechanical energy by the changing of heat energy into mechanical energy by the use of internal combustion gas engine units. The second most common method is by the use of electricity, whereby electrical energy is changed or manufactured into mechanical energy by means of an electric motor. The third most common method is by the use of steam whereby the heat energy of steam is changed or manufactured into mechanical energy by means of a steam engine.

[fol. 128] By the use of any of the methods of generating and manufacturing mechanical energy, a new and distinct form of energy results in each case from a manufacturing process; that is, changing one type of energy into another, and in each case a new commercial product is produced or manufactured, which is capable of transmission and use in industry.

With the equipment appearing in said photograph, the Arkansas-Louisiana Pipe Line Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy furnished by the natural gas used as fuel, into mechanical energy, which is manufacturing. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting said mechanical energy, after said mechanical energy has been produced or manufactured. The third accomplishment is the use of that mechanical energy after it has been manufactured and transmitted.

While said photograph shows the three separate and distinct units, namely, the manufacturing unit, the compressor unit, and the transmission unit, in close proximity, still the principles, mechanically, scientifically, and practically speaking, are identical, and are the same, as would be involved if the internal combustion gas engine unit was at some distance from the compressor unit which uses the energy. If the compressor unit and the internal combustion

gas engine unit were, say, for example, a half mile apart, each respective unit would function in the same manner as it does when they are situated in close proximity. In both cases, whether the manufacturing unit and the unit which uses the power are in close proximity or at distant points, they are connected by the transmission unit. The only difference in the equipment would be the length of the transmission rods, it being necessary, of course, that the transmission rods be of sufficient length to connect the manufacturing unit and the unit which uses the power, whether the units be in close proximity or at distant points.

The equipment shown in said photograph is permanently affixed to a concrete foundation, and has a permanent situs at the Munce Station. All three units shown in said photograph, that is, the power manufacturing unit, the compressor unit, and the transmission unit, are affixed to the same concrete foundation, and are in close proximity, for the reason that this arrangement is much more convenient from the standpoint of manufacturing mechanical power, its transmission and use, than to have the units marked Roman Numerals I and III widely separated and connected by a long transmission unit, such as is commonly found in oil fields where one internal combustion gas engine unit manufactures mechanical power which is used to pump numerous wells, in which case the mechanical power manufactured by the internal combustion gas engine unit is transmitted great distances through the medium of transmission rods.

Mechanical power, such as is manufactured by the internal combustion gas engine unit shown in said photograph could be transmitted to the compressor unit which uses it by belting, chains, shafting, ropes, etc.

I have read the decision rendered by the Supreme Court of the United States in the case of the Utah Power & Light Company v. Pfof, 52 S. Ct. 548, 286 U. S. 165, and have carefully studied the facts involved in that litigation. The generation and manufacture of electrical energy by harnessing the waterfall in Utah and compelling it to operate the turbines, thereby changing potential energy into mechanical energy, and the mechanical energy into electrical energy by the use of generators, and the transmission of the electrical energy over transmission lines into other [fol. 130] states, involves the necessity of building up sufficient voltage at the point of manufacture to cause the



electrical energy to flow of its own accord over the transmission lines. Scientifically speaking, it is a fact that unless the generators operated by the turbines at the falls in the Utah case, assisted by transformers build up a sufficiently high voltage, the electrical energy would not of its own accord flow over the transmission lines for any distance in sufficient quantity to make it commercially profitable. Similarly, it is necessary that the pressure of gas be built up before the gas can be delivered into the main high pressure pipeline. It is the pressure thus created that causes the gas to move in the main pipeline of its own accord.

The term "voltage" as applied to electrical energy, is that property of the electrical energy that is comparable to pressure of gas or water that causes the gas or water to move of its own accord. Amperes, as applied to electrical energy, is the volume. In the Pfoest case, the generators operated by the turbines had to be designed and properly adjusted so that at the time the mechanical energy was manufactured into the electrical energy, the voltage of the newly manufactured product, namely, electrical energy, had to be sufficiently high to cause the flow of the electrical energy over the transmission lines.

Electrical energy in sufficient quantities to supply the commercial demand in the states served by the plant in Utah could be manufactured by the generators, but if the generators and transmission equipment were not so designed and properly adjusted whereby the voltage of the electrical energy was sufficiently high to cause the flow of the electrical energy over the transmission lines, the volume of electrical energy would be available at the plant in Utah, but would not flow over the transmission lines.

In other words, injecting into the electrical energy so manufactured, at the time it is generated or manufactured, the ingredient which causes it to flow over the transmission lines is made a part of the manufactured or generated [fol. 131] product, and is comparable to the compression of gas.

The thing that causes gas to move through the main pipe line of the Arkansas-Louisiana Pipe Line Company from its Munce Plant at Sterlington to points in Texas and Arkansas, is the pressure built up in the line by the use of the compressor units which compress the gas and load it into said line. The thing that causes electrical energy

to flow over transmission lines, as involved in the Pfoest case, is the injection into the electrical energy, at the time of its generation, sufficiently high voltage to cause it to flow over the transmission lines into the other states.

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

George F. Matthes.

Sworn to and subscribed before me, Notary, on this the 15 day of May, 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 132] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. J. MECHLIN—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared F. J. Mechlin, who, after being duly sworn, did depose and say:

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Allegheny College, Meadville, Pa., in 1914 with a degree of Bachelor of Science. I also hold a Master of Science degree from Louisiana State University. My experience with internal combustion engines covers a period of thirty years. My first work in this line was between the years 1904 and 1908 as an employee of the Bessemer Gas Engine Company, with main offices and shops located at Grove City, Pa. The Bessemer Gas Engine Company was engaged in the development, manufacture and sale of gas engines, gas compressors, pumping powers and Deisel engines. This is the same concern now merged to form the Cooper-Bessemer Company that manufactured the internal combustion engines, transmission units, and compressors used by Complainant at their plant commonly called the "Munce Compressor Station". My work as an apprentice machinist covered a period of two years and gave an excellent opportunity to personally know the con-

struction and testing conditions for various products manufactured by the company. During the period mentioned, I [fol. 133] worked under Messrs. Montgomery and Bartholomew, Shop Foremen, and Mr. John McCune, Plant Superintendent.

During the latter part of my employment term I operated a lathe on which I machined brass castings and rough steel blanks and finished these into a complete valve unit which was then installed in the "direct driven" gas compressor then being commercially developed by the Bessemer Gas Engine Company. After sets of compressor valves were finished by me they were turned over personally to Mr. McDougall, Chief Tester for the company, and under his immediate supervision they were placed into position and test runs made on the compressors. The writer had an opportunity to observe the behavior of a number of compressors of this type as they were manufactured and tested before shipment to customers.

Prior to the development of the "direct driven" unit shown in Exhibit A, it was customary to transmit power from a Bessemer gas engine (prime mover) to a gas compressor by means of belting. These belts were nothing more or less than devices used to transmit power from the "prime mover" to the power consuming unit. The length of the belt and consequently the distance from the "prime mover" to the power consuming unit could and did vary within rather wide limits.

Mr. H. A. Murray, then Chief Designing Engineer of the Bessemer Gas Engine Company, claimed that the "direct driven" engine compressor unit (the forerunner of the type shown in Exhibit A attached to the affidavit executed by A. B. Singletary Jr.,) would have a distinct advantage over the separate units described in the preceding paragraph. Manufacturing and sales experience since that time indicated that his claims were well founded.

I have read the affidavit by Mr. A. B. Singletary Jr., and I agree that the mechanical unit pictured in Exhibit A con-[fol. 134] sists of three parts, shown by Roman Numeral III; a gas engine which converts heat energy due to the combustion of natural gas (within the gas engine cylinder) into mechanical energy and causes pistons to be displaced, thereby causing shafts to move and flywheels to revolve. This newly created mechanical energy may be transmitted as such by belts, shafting and other means, to more or less

distant power-consuming units. In the illustration the power-transmitting unit is labelled Roman Numeral II. This merely transfers mechanical energy from the prime mover (gas engine) to the power consuming unit labelled Roman Numeral I (compressor). Though the assembly shown in Exhibit A is bolted to a common iron bedplate and set on a common concrete foundation, there are three distinct functions performed by three separate and distinct machine units:

III. Prime mover converting energy into mechanical energy. (gas engine)

II. Power transmitting unit.

I. Power consuming unit (compressor)

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

F. J. Mechlin.

Sworn to and subscribed before me, Notary, on this the 16 day of November, 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 135] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ELLIS P. GAUDET—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared Ellis P. Gaudet, who, after being dully sworn, did depose and say:

I am a resident of Port Allen, West Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1933, with a degree of Bachelor of Science, majoring in mechanical engineering. During the school term 1934-1935, I did graduate work in mechanical engineering at the Louisiana State University and taught mechanical engineering classes. My principal work in these classes was the conducting of tests of steam engines, steam pumps, gas



engines, etc. Since September 1935, I have been employed as an engineer by the Supervisor of Public Accounts for the State of Louisiana, and my work in this capacity has brought me in contact with all types of gas engines, compressors and the like, used in the various industries in Louisiana, including the oil and gas industries.

I have read and carefully examined the affidavit prepared by A. B. Singletary Jr., to be filed in evidence in the above entitled and numbered cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Sterlington, Louisiana.

[fol. 136] I have also carefully examined and studied the photographs attached to said affidavit and marked "Exhibit A", for the purpose of identification, which photograph shows equipment similar to that located at the said "Munce Compressor Station". I have also carefully studied the comparison made in said affidavit of the operation of certain oil properties in Caddo Parish, Louisiana, to the operation at the "Munce Compressor Station".

The detailed analysis made of the equipment shown in said photograph and the comparison made in said affidavit, are correct.

Every installation of an internal combustion gas engine driving a compressor, consists of three separate and distinct operations, namely; the generation or manufacture of mechanical energy or power by the internal combustion gas engine unit; the transmission of this mechanical energy or power from the point of power take-off of the internal combustion gas engine unit to the compressor unit, this transmission may be through one of several mediums such as, belts, chains, gears, shafts or rods; and third, the consumption or use of this mechanical energy by the compressor unit.

Attached hereto, and made a part hereof, marked "Exhibits 1, 2, 3, 4, 5, and 6, for the purpose of identification are actual photographs, taken by me, showing the operation of certain oil wells in one of the oil fields in Louisiana, where one internal combustion gas engine unit, through the medium of rods as transmission units, is used to pump as many as nine oil wells at one time, said oil wells being located as far as one-half mile from the power manufacturing internal combustion gas engine unit.

Exhibit 1, shows the North side of a building which is used exclusively to house one 90 horsepower internal combustion gas engine unit which unit is identical in principal of operation to the internal combustion gas engine units used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station." This engine converts heat energy of natural gas used as fuel into mechanical energy or power just as do the internal combustion gas engine units operated by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". Also shown on Exhibit 1, are five rods, all leading from the said internal combustion gas engine unit. These rods are used to transmit the mechanical energy manufactured by the 90 horsepower internal combustion gas engine unit, from said unit to pumping units located on five different oil wells. These rods perform the same function as do the transmission rods used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". This operation is identical in principal to the transmission of the mechanical energy at the "Munce Compressor Station", the only difference being that in this case the rods are many times the length of the rods at the "Munce Compressor Station".

Exhibit 2, shows the South side of the same building used exclusively to house one 90 horsepower internal combustion gas engine unit. On said Exhibit 2, are also shown four rods which lead from the same 90 horsepower internal combustion gas engine unit and transmit the mechanical energy manufactured by said internal combustion gas engine unit from same, to four other oil wells.

On Exhibit 3, is shown the same building used exclusively to house one 90 horsepower internal combustion gas engine unit as shown in Exhibits 1 and 2. Also shown on Exhibit 3, is one of the same five rods leading from the North side of said building. I have labelled this rod, "Transmission Rod". In addition to the building housing the internal combustion gas engine unit and the one transmission rod, Exhibit 3, also shows the pumping mechanism at one of the oil [fol. 138] wells which is operated by the mechanical energy transmitted from the internal combustion gas engine unit through the transmission rod and used in pumping an oil well. In other words, Exhibit 3, shows the entire system on one well; the building housing the source of the mechanical energy, the internal combustion gas engine unit, the transmission rod, and the power consuming unit. This arrange-

ment is identical in principal to that of the manufacture, transmission and consumption of mechanical energy employed by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station".

Exhibit 4, gives another view of the same transmission rods leading from the North side of the building housing the 90 horsepower internal combustion gas engine unit, above described. In addition, in the back ground marked "Well", is shown another power consuming pumping unit located on another oil well. Also shown on this Exhibit 4, is a mechanism, which we have marked "A", which is used to change the direction of one of the transmission rods. Marked "B" on said Exhibit, is shown the same transmission rod that is shown on Exhibit 5.

Exhibit 5, gives another view of the same transmission rod, labelled "B" in Exhibit 4, and in the back ground on Exhibit 5, and marked "Well", is shown another well on which is located another power consuming, pumping unit. This Exhibit 5, clearly shows the long distance that mechanical energy can be transmitted through the medium of a rod.

These five Exhibits clearly show that mechanical energy can be, and is, transmitted great distances through the medium of rods as transmission units and that the generation or manufacture of mechanical energy through the use of an internal combustion gas engine unit, is an operation very distinct from the transmission or consumption of that mechanical energy.

As explained in the affidavit of A. B. Singletary Jr., me-[fol. 139]chanical energy manufactured by any internal combustion gas engine unit, such as the 90 horsepower engine above described or one of the engines used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station", is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

In the same oil field in which the photographs above described were taken, there are several other oil companies operating other than the one owning and operating the 90 horsepower internal combustion gas engine unit, hereinabove described. These other companies could very easily buy mechanical power for the pumping of their wells from the company operating said 90 horsepower engine. The

only thing necessary would be to connect another transmission rod from the 90 horsepower engine to their well. If this were done, there would be the sale of mechanical energy, as such, for use in industry.

Deponent further says that the statements made in this affidavit are statements of fact which are within his personal knowledge.

E. P. Gaudet.

Sworn to and subscribed before me, Notary, on this the 19 day of November, 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]



control of the  
and horsepower  
of combustion gas  
which manufactures  
may from

on Rods  
emit  
energy

Exhibit 1

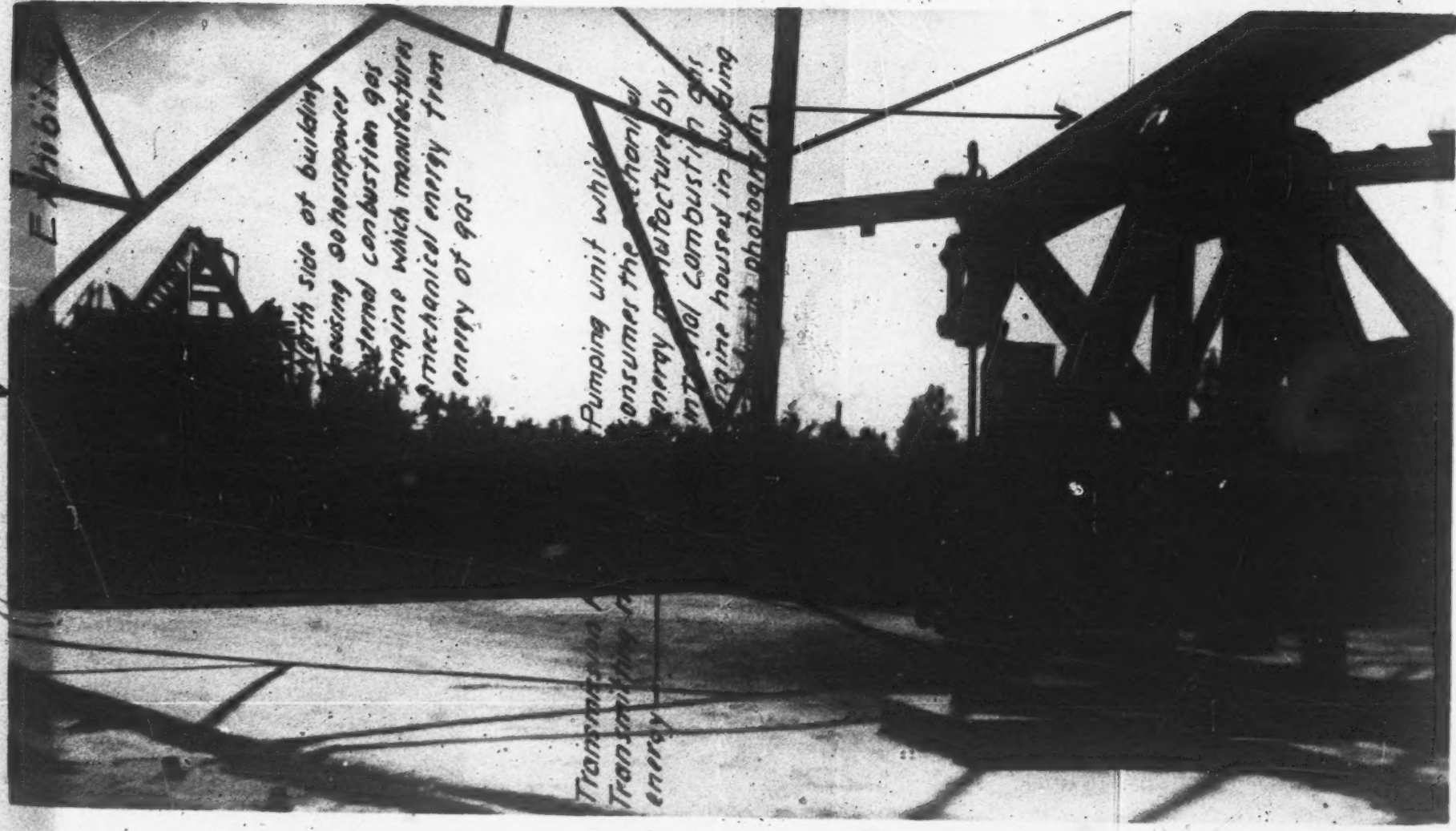


Exhibit

North side of building  
housing 30 horsepower  
internal combustion gas  
engine which manufactures  
mechanical energy from  
energy of gas

Pumping unit which  
consumes the mechanical  
energy manufactured by  
internal combustion gas  
engine housed in building  
shown in photograph

Transmission  
Transmitting  
energy





113





*Exhibit 5*

*Well - power consuming unit here*



114

[fol. 145] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF HAMILTON JOHNSON—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared Hamilton Johnson, who, after being duly sworn, did depose and say:

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Rollins College in 1893, with the degree of Bachelor of Arts, from Vanderbilt University in 1896, with the degree of Bachelor of Engineering and after an additional year of graduate work at Vanderbilt received in 1897, the degree of Mechanical Engineer. I was engaged continuously in the active practice of the engineering profession for the next twenty-seven years, my work consisting largely of the design and installation of power plants of various kinds. I was for a number of years City Engineer of Jackson, Mississippi. From 1920-1923, I had charge of the design and supervision of the engineering features of the rehabilitation of all the State Institutions of Mississippi, carried out by the Mississippi State Bond Improvement Commission.

In 1923, I came to Baton Rouge, to handle the engineering problems involved in the construction of the new plant of the Louisiana State University. When this work was completed I was appointed head of the department of Mechanical Engineering in the Louisiana State University and have [fol. 146] occupied that position continuously since September, 1924. In that capacity I give instruction in machine design and also in the theory and design of internal combustion engines.

I have no personal knowledge of the equipment of the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company nor of the various operations carried on there, but I have carefully examined the affidavits to be filed in this case by A. B. Singletary, Jr., Benjamin C. Craft, G. F. Matthes and Ellis P. Gaudet, and the different exhibits accompanying them. If the equipment and method of operation or the compressor station are substantially as shown in those affidavits and exhibits, it is my opinion that the conclusions reached by the affiants as to the segre-

gation of the different elements of machinery according to the specific functions performed by each are thoroughly sound and fully justified by the facts set out in the affidavits.

In the formal study of machine design all machinery is divided into three classes:

1. Prime movers—machines which receive from some source in nature energy which is not of a kind suitable for useful work and transform this into the mechanical energy of moving solid bodies which may be applied to doing useful work. As examples of prime movers, we have steam boilers and engines and internal combustion engines which utilize the potential heat energy of fuel as their source of natural energy, windmills which utilize the kinetic energy of moving masses of air, water wheels which utilize the kinetic energy of moving masses of water, etc.

2. Machinery of transmission, machine elements adapted to receive mechanical energy from a prime mover and [fol. 147] transfer this energy to the place where it is to be used to do work. As examples, we have shafts, rods, belts and pulleys, gear wheels, etc., and in the case of electrical transmission of power a complex system consisting of the electric generator, transformers, wires and motor.

3. Machinery of application, machines adapted to receive the mechanical energy which has been brought to them and apply it to perform the specific work for which they were designed. Into this latter class, therefore, would fall all machines used to perform specific tasks such as machine tools, pumps, compressors, etc.

Wherever any task is performed by machines as distinguished from human or animal energy all three of these classes of machinery must necessarily be employed, and this is true whether the different units are widely separated or all assembled on a single foundation.

In the case under consideration, as pointed out in the affidavits above referred to, the gas engine is the prime mover, the rods leading from the cross-head of the engine to the compressor constitute the machinery of transmission, and the compressor itself is the machine of application which applies the mechanical energy transmitted to it from the prime mover to the specific task of drawing gas from

the wells and raising it to the higher pressure necessary for its economical transportation in pipes to a distance.

The transformation of potential heat energy into mechanical energy by the prime mover is, therefore, an entirely [fol. 148] distinct operation from the utilization of that mechanical energy by the compressor.

Hamilton Johnson, M. E.

Sworn to and subscribed before me, Notary, on this the 21 day of Nov., 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF BENJAMIN C. CRAFT—Filed February 12, 1937

Before me, the undersigned authority, personally came and appeared Benjamin C. Craft, who, after being duly sworn, did depose and say:

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Leland Stanford University in 1929 with a degree of Engineer in Mines, specializing in Petroleum Engineering. I worked during the summer of 1929 for the Olympic Refining Company in California. From the Fall of 1929 to 1935, I held the chair of Assistant Professor of Petroleum Engineering at Louisiana State University. At present, I am Associate Professor of Petroleum Engineering at the above institution. During the summers of 1930 and 1931, I worked as a floorman for the Stovall Drilling Company in both the Richland and Monroe gas fields.

I have visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana, and have carefully examined all of the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, [fol. 150] and other equipment referred to herein.



I have read and carefully examined the affidavit prepared by A. B. Singletary, Jr., to be filed in evidence in the above entitled and numbered cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana. I have carefully examined and studied the photographs attached to said affidavit executed by the said A. B. Singletary, Jr., and marked, "Exhibit A", for the purpose of identification. I have also carefully examined and studied the copy of a map attached to the said affidavit executed by said A. B. Singletary, Jr., and marked, "Exhibit B", for the purpose of identification.

I feel that I am qualified from my engineering experience, both theoretical and practical, to say that the detailed analysis of the equipment shown in the said photograph attached to said affidavit executed by the said A. B. Singletary, Jr., is correct.

Any arrangement of an internal combustion gas engine driving a compressor, whether directly coupled or connected through an arrangement of belts or otherwise, can be divided into three separate and distinct units, namely; the internal combustion gas engine unit, prime mover, which manufactures mechanical energy or power by the conversion of heat energy contained in the gas used as fuel into mechanical energy or power, a new product having entirely different properties from the heat energy of the fuel used; second; a compressor unit which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit and, third; the transmission unit, which unit transmit the mechanical energy or power manufactured by the internal combustion gas engine unit, to the power consuming compressor unit.

[fol. 151] The analysis and explanation made in the affidavit executed by the said A. B. Singletary Jr., of the movement of gas handled by the Arkansas-Louisiana Pipe Line Company from its wells located in the Richland and Monroe gas fields to the plant commonly called the "Munce Compressor Station" by reference to the map marked, "Exhibit B", and attached to the said affidavit executed by the said A. B. Singletary Jr., correctly describes the operation of the equipment shown on said map.

The gas wells owned by the Arkansas-Louisiana Pipe Line Company are connected to a field-gathering-system

which is the means by which the gas is gathered or collected from the gas wells in the field and delivered to the compressor units located at the "Munce Compressor Station".

The action of the compressor units at the "Munce Compressor Station" caused a lower pressure to exist in the field-gathering-lines than would have existed were all of the gas wells allowed to flow into these lines under their own pressures. In fact, had all of these wells been allowed to flow into the field lines under their own rock pressures, only the higher pressure wells would have produced. With the condition of lowered pressure existing in said field-gathering-lines, all of the wells operated by the Arkansas-Louisiana Pipe Line Company were regulated to produce an allowable quota as fixed by the Louisiana Department of Conservation. The compressor units at the "Munce Compressor Station", which caused this lowering of pressure in the field-gathering-lines were, therefore, necessary from the view point of production as explained in the affidavit executed by the said A. B. Singletary Jr. .

It was explained to me by the Superintendent of the "Munce Compressor Station" at the time of my inspection [fol. 152] of said plant, that the gas supplied to said station from wells owned by the Arkansas-Louisiana Pipe Line Company and compressed at the "Munce Compressor Station", must be merchantable gas. That is, said gas be in such condition that it can be sold to the consumer. However, said gas was not merchantable because it contained quantities of water and natural gasoline. Large water traps were, therefore, installed in each line delivering gas to said "Munce Compressor Station". The purpose of these water traps was to remove the water and natural gasoline contained in the gas before same was metered in the "Munce Metering Station". These water traps consisted of large vessels, in some cases, equipped with baffles. The gas entered these vessels through a three inch, or larger, line about halfway up from the bottom of said vessels, and due to the large diameter of the vessels as compared to said line, the velocity of flow of the gas was greatly reduced, thereby causing the water and natural gasoline contained in said gas to settle to the bottom of these traps, where same could be blown out when necessary.

The gas, after having passed through these water traps, entered the "Munce Metering Station" where it was metered by both the producing company and the purchaser,

the Arkansas-Louisiana Pipe Line Company. The gas after being metered, passed through gate valves into one of three main "Headers" leading to the compressor units. These "Headers" consisted of two twenty inch lines and one sixteen inch line. These "Headers" were, in turn, connected to two transverse "Headers". Due to the large size of these transverse "Headers" and the fact that all of the water and natural gasoline was not removed from the gas by the water traps located ahead of the "Munce Metering Station", there was a further collection of water and gasoline in these transverse "Headers", which was blown out when a sufficient amount had accumulated.

[fol. 153] Due to the inefficiency of the water traps located ahead of the "Munce Metering Station" as well as their small capacity, certain quantities of water vapor and gasoline vapor were carried into the compressor units along with the gas.

The gas, after being compressed in said compressor units, was delivered into lines leading to cooling towers. The cooling of the gas in the cooling towers, accomplished the following: Water and gasoline contained in the gas was condensed; the volume of the gas was reduced, that is, the space occupied by a given quantity of the gas was reduced, because Charles' Law states that with constant pressure, the volume of a gas varies as the absolute temperature, and because of this reduction in space occupied, a larger amount of gas was loaded into the main 20 inch interstate line; corrosion of the main 20 inch interstate line, which would have occurred from gas at high temperature, was reduced; melting of the insulation on the main 20 inch interstate line from the hot gas was eliminated.

At the time of my inspection of the "Munce Compressor Station", a "scrubber" had been installed in the line leading from the cooling tower. The purpose of the said "scrubber" was to remove the remaining quantities of water and gasoline which it was found were not removed by the water traps or elsewhere.

The "Munce Compressor Station" served the following purposes; the generation or manufacture of mechanical power or energy necessary to the operation of any gas compressor; the transmission of this mechanical power or energy from the source of said mechanical energy or power, the internal combustion gas engine units, to the power con-

suming compressor units; the production of the allowable [fol. 154] quota of gas from wells which would otherwise not have been able to produce; the removal of water and gasoline from the natural gas thereby making same suitable for pipeline transportation and sale; the preparation and loading of the gas into an interstate carrier for interstate shipment.

It should be emphasized that each step which removed quantities of gasoline and water from the natural gas, changed the specific gravity of the gas as well as its chemical composition which characterized each as a manufacturing process.

Benjamin C. Craft.

Sworn to and Subscribed before me, Notary, on this the 23 day of Nov., 1936. W. A. Cooper, Notary Public in and for East Baton Rouge Parish, Louisiana. (Seal.)

[File endorsement omitted.]

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD—Filed February 12, 1937

It is hereby stipulated and agreed by and between counsel for plaintiff and counsel for defendant as follows:

The cause is to be set down for hearing upon the merits upon the application for a permanent injunction as soon as may be

For the purpose of making up the record upon which the case shall be heard upon the merits, it is admitted by the parties respectively that the witnesses hereinafter named, whose affidavits were presented in connection with the application for a preliminary injunction, would testify to the matters, statements and exhibits set out in their respective affidavits, the originals of which have heretofore been filed, and that those witnesses hereinafter named, whose affidavits were not presented in connection with the application for a preliminary injunction, would testify to the matters, statements and exhibits set out in their respective affidavits, the



originals of which are attached hereto and filed with this stipulation, and such affidavits and exhibits are to be received in evidence precisely as though the witnesses named had been examined before a Master and given their depositions in the same language as appears in their respective affidavits and the exhibits offered in evidence in connection with this testimony, the right being reserved, however, for either party to object upon argument of the case to any statement in any affidavit upon any ground other than [fol. 156] form, upon which objection might have been made, if the evidence had been taken by depositions and objections made and reserved at the time of taking.

The witnesses referred to and the affidavits made by them, together with exhibits attached thereto, are identified as follows:

**For Plaintiff:**

W. C. Nestor, affidavit dated November 17th, 1934;  
 Walter A. Stewart, affidavit dated November 17th, 1934;  
 Robert H. Johnston, affidavit dated November 17th, 1934;  
 Paul Weeks, affidavit dated November 17th, 1934;  
 W. H. Buckley, affidavit dated November 17th, 1934;  
 M. J. Lasseigne, affidavit dated November 17th, 1934;  
 H. T. Goss, affidavit filed December 17th, 1935;  
 H. T. Goss, affidavit dated December 18th, 1936;  
 T. W. Johnson, affidavit dated December 18th, 1936;

**For Defendant:**

A. B. Singletary, Jr., affidavit dated May 15th, 1936, and exhibits attached thereto and made a part thereof;  
 A. B. Singletary, Jr., affidavit dated December 8, 1936;  
 A. B. Singletary, Jr., affidavit dated January 19, 1937;  
 C. F. Matthes, affidavit dated May 15th, 1936;  
 F. J. Mechlin, affidavit dated November 16th, 1936;  
 E. P. Gaudet, affidavit dated November 19th, 1936, and exhibits attached thereto and made a part thereof;  
 Hamilton Johnson, affidavit dated November 21st, 1936;  
 B. C. Craft, affidavit dated November 23rd, 1936.

It is agreed that objections to any statement in any affidavit on any ground other than form may be presented in oral argument or in brief with precisely the same effect as if such objections had been made when the affidavits were

offered in evidence, and that the right to insist upon such objections shall be reserved to each party by presentation in oral argument or in brief in such manner that each party shall be in the same position as though such objections had been maintained or overruled by the Trial Court and a formal bill of exception reserved.

Dated January 19th, 1937.

Leon O'Quin, Blanchard, Goldstein, Walker &  
O'Quin, Counsel for Plaintiff. E. L. Richardson,  
Counsel for Defendant.

[File endorsement omitted.]

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO ABANDON ALL CONTENTIONS WITH CERTAIN  
EXCEPTIONS—Filed February 12, 1937

Now comes the plaintiff, Arkansas Louisiana Pipeline Company, and suggesting to the Court that to clearly define the issues presented herein it does, in view of the decision of the Supreme Court of the State of Louisiana in the case of State ex rel. Porterie v. H. L. Hunt, Inc., 182 La. 1073, formally abandon all contentions of the unconstitutionality and invalidity of Act No. 6 of the Legislature of Louisiana for the year 1932, as set forth in paragraphs 17 and 16B to F, inclusive, of the petition herein.

Leon O'Quin, Blanchard, Goldstein, Walker & O'Quin,  
Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 158] IN UNITED STATES DISTRICT COURT FOR THE WEST-  
ERN DISTRICT OF LOUISIANA, MONROE DIVISION

In Equity. No. 615

ARKANSAS-LOUISIANA PIPE LINE COMPANY, Complainant

vs.

MILTON COVERDALE, Sheriff and Tax Collector, Respondent

I concur. R. E. F.

I concur. W. G. B.

Before Foster, Circuit Judge, and Dawkins and Borah,  
District Judges

OPINION OF COURT—Filed May 24, 1937

DAWKINS, D. J.:

The issues in this case have been stated in opinions heretofore handed down on the application for preliminary injunction.

On the original hearing a preliminary writ was granted on the finding that the statute assailed violated provisions of both the State and Federal Constitutions. Shortly thereafter, the State Supreme Court sustained its constitutionality under the State law and a rehearing was promptly [fol. 159] granted by this court. On the rehearing a preliminary injunction was issued for the reason we concluded the Act in question infringed the commerce clause of the Federal Constitution. The case has now been submitted on the merits.

The evidence before us is the same, except that respondent has offered additional affidavits to show the mechanical operation of the compressor station and its accessories, together with expert opinions of the witnesses as to the effects. The purpose was to sustain the contention of respondent that there is a distinct operation amounting to a manufacture of mechanical power before it is used to force the gas through the pipe lines and to thereby demonstrate that the case is parallel to that of Utah Power & Light Co. vs. Pfof, 286 U. S., 165, in which a similar tax was sustained. The further contention is made by defendant from these facts that the gas does not enter the stream of inter-

state commerce until it passes through the condensers into the twenty inch pipeline through which it is conveyed to points of sale in the States of Texas and Arkansas. There is no dispute as to the physical or mechanical nature of these operations, and we find these additional facts as described by the witnesses without, however, accepting the conclusions or opinions which they advance as to effect.

As the name indicates, the plaintiff's business is one of transporting natural gas by pipe line, more than 96% of which is done in interstate commerce, as conclusively as if it operated tank cars in transporting the kindred mineral, crude oil, into the other states for sale. Naturally, gas not being susceptible of commercial transportation by [fol. 160] the latter method, it has to be pumped through pipe lines. In conducting its business, plaintiff has the right to use as a part thereof all of the usual accessories and instrumentalities reasonably incident to its operation. See *Norfolk & Western R. R. Co. vs. Pennsylvania*, 136 U. S. 114; *Ozark Pipe Line vs. Monier*, 266 U. S. 555. It would seem, therefore, that it is entitled to use its compressor stations as a part of this business, free from improper State interference, equally with its pipe line. It was clearly held in *Tax Commission of Mississippi vs. Interstate Gas Company*, 284 U. S. 41, that a similar excise tax could not be imposed based upon the size and mileage of the pipe line used in interstate commerce.

Does the plaintiff have any business or is it engaged commercially in doing anything other than transporting natural gas drawn from its own wells plus what it buys from others, 96% of which passes into and is sold in other States? If so, then under the doctrine of *Utah Power Company vs. Pfost*, supra, that business or commercial operation, we think may be taxed. The operation of its internal combustion engines is for the sole purpose of applying their power to the gas in drawing it from the wells through the gathering lines and forcing it through the main line to its destination outside of the State, just as the energy created by the burning of coal or oil in a locomotive furnishes the power to pull tank cars over a line of railroad. In the *Utah Power Company* case, it was shown that the tax-payer owned and operated a large power plant, in which, by applying the energy of falling water to a com-[fol. 161] plete system of machines and accessories, a dif-



ferent valuable article of commerce was produced, to-wit, electric power. It was this article or commodity so manufactured and produced which was conveyed over its lines. On the other hand, the plaintiff takes a natural product of the earth, and, except for passing it through machines for the elimination of refuse and impurities, by the same force, transports it from the wells into other States. The power produced or created by the mechanical operation of its internal combustion engines is exclusively for that purpose. None of it is sold or transported as such away from the point of its production. The distinction, we think, is made clear by the following expression of the Supreme Court in the cited case:

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce. Appellant's chief engineer, although testifying that generation is a part of the process of transferring energy, said on cross-examination that in the process of generation there is a 'conversion of mechanical energy in the turbine shaft into a different form of energy, that is electrical energy. It must be converted into electrical energy before it can be transmitted. \* \* \* This process of transformation is complete at the generator, and you have a greater amount of energy there, capable of doing a greater amount of mechanical work, at the generator than you do after transmitting it into Utah.' The evidence amply sustains the conclusion that this transformation must take place as a prerequisite to the use of the electrical product, and that the process of transferring, as distinguished from that of producing, the electrical energy, begins not at the water fall, but definitely at the generator, at which point measuring appliances can be placed and the quantum of electrical energy ascertained with practical accuracy."

[fol. 162] Utah Power & Light Company vs. Pfof, 286 U. S. 180.

Our conclusion is that the attempted assimilation is metaphysical and that the business or operation cannot be

dissected or torn apart so as to make of it distinct entities for the purpose of taxation, but that it must be treated as a unit and that entire unit is engaged almost exclusively in interstate commerce.

Passing now to the alternative contention of respondent, i. e., that notwithstanding the engines may be instrumentalities of interstate commerce, they may nevertheless be taxed as here undertaken. It is well settled that a State may levy taxes which indirectly affect such commerce, such as ad valorem taxes upon the physical property situated therein, franchise taxes, occupational or license taxes, and on the net profits of a business part of which was derived from interstate commerce. Property physically in and having its situs within the State receives the same benefits of protection from its laws, whether used in one class of commerce or the other, and may be taxed accordingly where there is no discrimination. In similar fashion, a corporation doing business within the State and for the same reasons may be required to pay franchise taxes. So, too, may corporations or individuals, engaged in interstate commerce, be taxed for the privilege of carrying on their business or pursuing their occupations where they have a domicile or business situs in the State. However, all of these are indirect taxes, since they do not bear immediately upon the commerce itself or the instrumentalities by which it is carried on. On the other hand, wherever and whenever a tax has been laid upon objects or articles passing in interstate [fol. 163] commerce, or the instrumentalities or agencies by which it is carried on, the same has been held beyond State power under the commerce clause of the Federal Constitution. See cases cited and discussed in *Helson & Randolph vs. Kentucky*, 279 Fed. 245. This case cites and quotes with approval from that of *Minot vs. Philadelphia, Western & B. R. R. Co.* (No. 9645) 17 Fed. Cas. 458, in which the State of Delaware had imposed an excise or privilege tax requiring that 'every railroad incorporated by the State, and doing business therein, should, on the first day of January in each year thereafter, within thirty days from such time, pay to the State Treasurer a tax of One Hundred Dollars, for the use in the State of Delaware of each locomotive belonging in whole or in part to said Company, and at any time during the preceding year used by said Company, within the State of Delaware . . . ', twenty-five

dollars for each passenger car, and ten dollars for each freight car or truck used under the same circumstances. Mr. Justice Strong, sitting on Circuit, in sustaining the plea of unconstitutionality under the commerce clause, among other things, had this to say :

The remaining question is attended with more difficulty. I refer to the legality of the tax imposed by section 3 of the act. That section exacts from the company the payment every year of a tax of one hundred dollars for the use in the state of each locomotive, owned in whole or in part by the company, and at any time during the preceding year used by the company, within the state. A similar tax, though less in amount, is imposed for the use in the state of each passenger, freight and truck car; for the use of the rolling stock generally. This is not a tax upon the property of the company nor upon its franchise generally. It [fol. 164] is not a tax upon the locomotives or the cars. It is called a tax upon their use in the state; but it seems to be rather a license fee exacted for the privilege of using rolling stock. Can such a burden be imposed? I have said the franchise can be taxed as property, and that the property acquired or held under it is taxable; but it may be doubted whether such an exaction as this can be regarded as a tax either on the franchise or on the property of the company. Can the state, after having granted to the complainants the right to run locomotives in and through its territory freely, and also the right to use all the ordinary means of conveying freight and passengers, compel the payment of license fees for the use of those ordinary means of transportation, and that not for police purposes? Can it say to the grantees of this franchise, 'True, you have purchased the right to use locomotives and cars; but if you use them you shall pay an additional price'? And is not a license fee thus exacted an additional price? I do not propose, however, to answer these questions or to decide that such an exaction is or is not an impairing of the obligation of the contract between the company and the state, for, in my opinion, the law of the state that attempts to impose this tax or duty is invalid for other reasons.

In the statement of facts to which the parties have agreed, I find the following. It is agreed 'that much the larger portion of the locomotive engines, passenger cars,

freight cars, and trucks, belonging to the Philadelphia, Wilmington & Baltimore Railroad Company, were used during the year 1869 (the year for which this tax is attempted to be collected), on the aforesaid main line of railroad of said company, extending from the City of Philadelphia, in the state of Pennsylvania, through the state of Delaware, to the city of Baltimore, in the state of Maryland, and for the purpose of transporting persons and property in and by a continuous course of transportation through, from, and into the said state of Delaware; that a number of engines, passenger and freight cars, and trucks, were used during the said year, on the main line from Philadelphia to a point about a mile beyond Wilmington, and thence on the line of railroad known as the 'Peninsular Line', extending through Delaware and a part of the eastern shore of Maryland to Christfield, and the several branches therefrom, and that very few of either the engines, cars, or trucks, of the said company, were used exclusively within the state of Delaware during the year 1869.'

[fol. 165] It is, therefore, admitted, that the tax or license fee is laid upon the use of the locomotives, cars, etc., mainly employed in transporting persons or property through the state from other states, or into it, or out of it. Such an imposition is, in my opinion, a regulation of commerce between states. It is a prescription that passengers and merchandise shall not be carried through the state except upon certain conditions. If the tax can be imposed at all, it may be to any extent. It has often been said that when a right to tax exists it is unlimited by anything but the discretion of the legislature that imposes it. This, of course, is to be understood as applying only to cases where the state has not by contract restricted its power. Said Chief Justice Marshall, in *McCullough vs. Maryland*, 4 Wheat. (17 U. S.) 316: 'An unlimited power to tax involves necessarily a power to destroy, because there is a limit beyond which no institution and no property can bear taxation. A question of constitutional power can hardly be made to depend on a question of more or less. If the states may tax, they have no limit but their discretion, and the bank must, therefore, depend on the discretion of the state for existence.' If this is so, the power to tax the use of all means or instruments of conveyance of persons or property through the state is the same as a power to prevent such use en-



tirely. There is only a difference in the extent of its exercise.

I need hardly say, that a tax upon the ordinary and lawful means of transportation is practically a tax upon the thing transported.

Surely passage and transportation through a state are of this nature. If not, it is unfortunate. It is of national importance that in regard to such objects there should be but one regulating power, for if one state can directly tax persons and property passing through it, or indirectly, by taxing the use of means of transportation, every other may; thus commercial intercourse between states remote from each other may be destroyed. The produce of Western states may be effectually excluded from Eastern markets; for though it might bear the imposition of a tax by one state it would be crushed under the weight of many.' "

If the respondent in this case can impose a tax based upon the horse power of the engines used in propelling the [fol. 166] gas from one state to another, there is no limit upon its amount except legislative discretion, so long as there is no discrimination. Many pipe lines, as illustrated by the one from the gas fields in the Panhandle of Texas to Chicago, pass through several states and the transportation of the gas is made possible by the use of these compressor stations. If the State where the commodity or shipment originates can impose such a burden upon those instrumentalities, we can see no logical reason why the other states, through which the gas passes enroute to its destination, and in which it may be necessary to construct similar pumping or "booster" stations, may not impose similar taxes in their discretion. So that, by the time the gas reaches its destination, the cost to the consumer could be prohibitive. As the supply of natural gas in the country becomes exhausted, the desire of states in which it is produced to save it for use by its own citizens may tempt them to resort to appropriate expedients to prevent its being taken beyond their borders. That this will be attempted has already been demonstrated by the unsuccessful

effort of West Virginia, in the case of *Pennsylvania vs. West Virginia*, 262 U. S., 553. Should it be held that an excise tax may be validly laid upon the production of power used in such transportation, then the door is open to such abuse. We are compelled to say that the tax in this case is a direct burden upon the interstate commerce of the plaintiff and hence the section of the statute in question is contrary to the commerce clause of the Federal Constitution, in so far [fol. 167] as it applies to plaintiff's business.

Since our decision on the application for preliminary injunction, the Supreme Court has handed down a number of opinions which we think clarify considerably, if they do not enlarge, the meaning of interstate commerce in its relation to business activities extending into more than one State. In *Jones & Laughlin vs. National Labor Relations Board*, decided on April 12, 1937, the Act of July 5, 1935, (49 Stat., 29 U. S. C. 151) was upheld in so far as it applied to workers in the steel mills of the defendant. It is held that the business of defendant extending into many States was such that provisions of the Act of Congress in question, regulating the relations between employer and employee in interstate commerce, were applicable to employees of the appellant, although the work performed involved to some extent processes of manufacture. The *Stockyards* (*Staford vs. Wallace*, 258 U. S. 495) and *Grain Futures* (*Minnesota vs. Blassius*, 290 U. S., 1) cases were cited as analogous, in that the products (ores and steel) of *Jones & Laughlin*, upon which labor was performed, were in effect in continuous passage from one State to another. In the present case the journey is actually continuous, although as is elsewhere stated herein, the gas passes through machines which extract refuse and other non-merchantable substances, as well as gasoline required by the State law. If the employees of the plaintiff in the present case, who operate the compressor stations, in the light of these latest decisions of the Supreme Court, can be said to perform their work in interstate commerce so as to be subject to the provisions of the *Wagner Act*, as to which there appears little room for doubt, then those instrumentalities actually used in propelling the gas through the main pipe lines into [fol. 168] other States, would appear to be such a necessary and indispensable part of the plaintiff's business as to make a tax upon their use a direct burden upon interstate com-

merce. See also the Associated Press vs. National Labor Relations Board; National Labor Relations Board vs. Freuhauf Trailer Company; Washington-Virginia & Maryland Coach Company vs. National Labor Relations Board; and, National Labor Relations Board vs. Friedman-Harry Marx Clothing Company, Inc. decided at the same sitting.

The writ of injunction should, therefore, be made permanent.

Rufus E. Foster, U. S. Circuit Judge, Fifth Circuit.  
Ben C. Dawkins, U. S. District Judge, Western District of Louisiana. Wayne G. Borah, U. S. District Judge, Eastern District of Louisiana.

[File endorsement omitted.]

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[fol. 169] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION

In Equity. No. 615.

ARKANSAS-LOUISIANA PIPE LINE COMPANY, Complainant,  
vs.

MILTON COVERDALE, Sheriff and Tax Collector, Respondent

DECREE—Filed May 24, 1937.

The above numbered and entitled cause having been tried and submitted upon its merits, and the law and the evidence being in favor of the plaintiff and against the defendant, it is, therefore,

Ordered, Adjudged and Decreed that there be judgment in favor of the plaintiff, Arkansas-Louisiana Pipe Line Company, and against the defendant, Milton Coverdale, Sheriff and Tax Collector, permanently enjoining and prohibiting him from attempting to collect the horsepower tax upon the engines involved in this case, and from otherwise seizing or selling any of the property of the plaintiff in enforcement of said tax.

It is further Ordered, Adjudged and Decreed that the defendant pay all costs.

Done, Read and Signed on this the 22 day of May, A. D., 1937.

Rufus E. Foster, U. S. Circuit Judge, Fifth Circuit.  
Ben C. Dawkins, U. S. District Judge, Western  
District of Louisiana. Wayne G. Borah, U. S. Dis-  
trict Judge, Eastern District of Louisiana.

Filed May 24, 1937. E. C. Jackson, Clerk, U. S. Dist.  
Court, Western Dist. of La.

[fol. 170] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—  
Filed July 30, 1937

In the above entitled and numbered cause, it is Hereby  
Ordered, Adjudged and Decreed that the opinion rendered  
and filed by this Court in the above numbered and entitled  
cause on May 22, 1937, shall stand as the findings of fact  
and conclusions of law in said cause under Equity Rule  
70½, 28 U. S. C. A., Section 723.

Done, read and signed on this the 26 day of July, A. D.  
1937.

(Sgd.) Rufus E. Foster, Senior U. S. Circuit Judge,  
Fifth Circuit. (Sgd.) Ben C. Dawkins, U. S. Dis-  
trict Judge, Western District of Louisiana. (Sgd.)  
Wayne G. Borah, U. S. District Judge, Eastern  
District of Louisiana.

[fol. 171] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS OF RESPONDENT TO FINDINGS OF FACT AND CON-  
CLUSIONS OF LAW—Filed July 30, 1937

Now comes respondent in the above entitled and num-  
bered cause and objects and excepts as follows to the find-  
ings of fact and conclusions of law adopted by the Court:

Respondent objects and excepts to the failure of the Court  
to adopt the conclusions and opinions of expert witnesses



offered by respondent as to the effect of the facts given in their testimony which were adopted by the Court.

Respondent further objects and excepts to the conclusions of law and each of them.

E. Leland Richardson, Solicitor for Respondent.

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#### ORDER OVERRULING AND RESERVING EXCEPTIONS

The foregoing objections and exceptions of respondent are overruled by the Court, but the rights of respondent to complain upon appeal are fully reserved.

[fol. 172] Dated this 26 day of July, 1937.

(Sgd.) Rufus E. Foster, Senior U. S. District Judge, Fifth Circuit. Ben C. Dawkins, U. S. District Judge, Western District of Louisiana. Wayne G. Borah, U. S. District Judge, Eastern District of Louisiana.

[fol. 173]

Copy

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed July 30, 1937

Respondent, Milton Coverdale, Sheriff and Tax Collector, prays that he may be permitted to take an appeal from all of the findings, orders, decree and judgment of the District Court of the United States for the Western District of Louisiana, sitting as a three-judge court, composed of The Honorable Rufus E. Foster, United States Circuit Judge, The Honorable Ben C. Dawkins, United States District Judge, and The Honorable Wayne G. Borah, United States District Judge, duly entered in said court on or about the 22nd day of May, 1937, wherein the findings, orders, decree and judgment were made and rendered in favor of the complainant in the above entitled and numbered cause and against the respondent; that your petitioner is aggrieved by said decree which made permanent an interlocutory injunction previously issued in said entitled cause, for the reasons

set forth in the Assignment of Errors attached hereto; that said decree is contrary to law, for the reasons set forth in said Assignment of Errors attached hereto and made a part hereof, and is contrary to law and operates to the petitioner's prejudice and injury.

[fol. 174] Wherefore, your petitioner in this application, and respondent in said entitled and numbered cause, prays that an appeal be allowed to him in the said District Court of the United States for the Western District of Louisiana, sitting as above stated, to the Supreme Court of the United States, and that a transcript of the record, proceedings and papers upon and under which such findings, orders, decree and judgment were made, be duly authenticated and sent to the Supreme Court of the United States. Petitioner further prays that a proper order as to the security for costs required of him be made; that complainant, the Arkansas-Louisiana Pipe Line Company, be duly cited according to law.

Petitioner further prays for general and equitable relief, and for all necessary orders.

(Sgd.) Gaston L. Porterie, Attorney General of Louisiana; Justin C. Daspit, Special Assistant Attorney General; F. A. Blanche, Special Assistant Attorney General; (by E. L. R.), E. Leland Richardson, Special Assistant Attorney General, Solicitors for Respondent.

[fol. 175]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 30, 1937

Comes now the respondent in the above entitled and numbered cause and files simultaneously with his petition for appeal and as a part thereof, the following Assignment of Errors upon which he will rely in prosecuting the appeal petitioned for in said case from the final findings, orders, decree and judgment of the District Court of the United States for the Western District of Louisiana, sitting as a

three-judge court, which said final decree and judgment was duly entered in said court on the 22nd day of May, 1937.

1

The Court erred in holding that the tax levied by Section 3 of Act 6 of 1932, insofar as complainant is concerned is a direct burden on interstate commerce and is, therefore, violative of the commerce clause of the Constitution of the United States.

[fol. 176]

2

The Court erred in holding that the prime movers (internal combustion gas engines which convert, produce, generate or manufacture mechanical energy or power from heat energy in natural gas), the machinery of transmission (rods or shafts used to transmit mechanical energy or power from the point of generation to the point of use or application), and the machinery of application (compressors which use the mechanical energy or power in compressing the natural gas and loading it into the twenty-inch interstate main), for the purpose of this case constitute one unit, and that the one unit in its entirety, is an instrumentality of interstate commerce.

3

The Court correctly held that, in the language of the Court, "there is no dispute as to the physical or mechanical nature of these operations, (1. Prime movers which produce, generate or manufacture mechanical energy or power; 2. Machinery of transmission, consisting of rods or shafts which transmit the mechanical energy or power after its production, generation or manufacture from the place of production, generation or manufacture, to the point of use where it is consumed by the machinery of application, the compressors; 3. The compressors, which consume the mechanical energy or power, after its production, generation or manufacture, and transmission), and we find these additional facts as described by the witnesses (for the state) \* \* \*," but the Court erred in failing to accept the conclusions and opinions of the State's expert witnesses as to the effect. (Parenthesis added.)

4

The Court erred in holding that the prime movers (internal combustion gas engines, that are bolted down to concrete and have a permanent situs in Louisiana, and are used by complainant to convert, produce or manufacture the heat energy in natural gas into mechanical energy or power which is transmitted through rods or shafts to the point of consumption), are instrumentalities of interstate commerce.

5

The Court erred in not holding that the prime movers in the case at bar are engaged in an intrastate function, viz., that of producing, generating or manufacturing mechanical power or energy, and that complainant is engaged in the intrastate business in Louisiana of producing, generating or manufacturing mechanical power or energy and is subject to the tax levied by Section 3 of Act 6 of 1932, which levies an excise, license or privilege tax on the business of producing and generating mechanical energy or power, measured by the horse power capacity of the prime movers used to produce, manufacture or generate such power or energy.

6

The Court erred in holding that the business or operation in Louisiana of complainant, which is both intrastate and interstate, "cannot be dissected or torn apart so as to make of it distinct entities for the purpose of State taxation, but [fol. 178] that it must be treated as a unit;" the Court further erred in not holding that when complainant produces, manufactures and generates mechanical power or energy in Louisiana by the use of prime movers, that such operation or business in Louisiana is intrastate in character, and is subject to the tax levied by Section 3 of Act 6 of 1932, even though such energy or power may ultimately be transmitted and used in both intrastate and interstate operations, or even if it should ultimately be used exclusively to operate an instrumentality of interstate commerce; the Court erred in holding that the State has no right to assess an excise, license or privilege tax on the intrastate business of one engaged in both intrastate and interstate commerce.



## 7

The Court erred in failing to hold that complainant, in operating the two prime movers (internal combustion gas engines) in Louisiana at its Munce Plant with 250 horse power each, for the purpose of producing, generating or manufacturing mechanical energy or power, which energy or power is ultimately consumed by electric generators which generate electricity for lighting buildings, operating repair machines, repair shops and air compressors, was engaged in the intrastate business of producing, generating or manufacturing mechanical energy or power and is subject to the tax levied by Section 3 of Act 6 of 1932.

## 8

The Court erred in failing to hold that the tax levied by Section 3 of Act 6 of 1932 is an excise, license or privilege [fol. 179] tax levied on the privilege of producing, generating or manufacturing mechanical power or energy in Louisiana as a distinct act of producing, and without regard to its subsequent use.

## 9

The Court erred in failing to hold that, so far as complainant in the case at bar produces, manufactures or generates mechanical energy in Louisiana, its business is purely intrastate, subject to State taxation and control.

## 10

The Court erred in holding that, in the language of the Court, "The operation of its internal combustion engines is for the sole purpose of applying their power to the gas—," and further erred in failing to hold that it is the compressors, operated by complainant that draw the gas from the wells through the field-gathering lines and forces it into the twenty-inch interstate main, and that the mechanical power or energy manufactured, produced or generated by the prime movers is transmitted to the machinery of application, the compressors, and it is the compressors that aid in the production and compression of the natural gas.

## 11

The Court erred in failing to hold that the natural gas enters interstate commerce only after its actual physical

delivery into the twenty-inch interstate main at complainant's Munce Station; the Court further erred in failing to hold that the gathering of the gas in the field-gathering [fol. 180] systems by both complainant, and persons from whom complainant purchases gas, is intrastate commerce; the Court further erred in not holding that the conversion of natural gas from an unmerchantable product to a merchantable product at the Munce Station constitutes a manufacturing process and an interruption in the transportation of the natural gas, and is further reason the gas is not in interstate commerce until it is actually physically within the twenty-inch interstate main at complainant's Munce Station.

## 12

The Court erred in finding that complainant's only business in Louisiana is that of transporting natural gas by pipe line into other states, and erred in failing to find that complainant is engaged in intrastate commerce in Louisiana in owning, operating and producing natural gas from the soil in Louisiana, maintaining a field-gathering system, intrastate in character, which gathers the gas from the wells and carries it to a central point on the edge of the producing area where it is converted from an unmerchantable product to a merchantable product, as the record shows, and is engaged in an intrastate operation in the generation, manufacture and conversion of heat energy in natural gas by the use of internal combustion gas engine units, into mechanical power, which is a new product of commercial value, capable of measurement, sale and transmission, all of which constitutes intrastate commerce, and is subject to State regulation and taxation.

[fol. 181]

## 13

In the alternative, and in the alternative only, should the tax levied by Section 3 of Act 6 of 1932 be held to be on interstate commerce, which is denied by respondent, then, and in that event only, respondent assigns as error the failure of the Court to find that the tax involved falls not directly on interstate commerce, but indirectly, and not violative of the commerce clause of the Constitution of the United States; the Court further erred in failing to hold that when a tax is, as here, levied on all similarly situated, and in terms is not upon the business done, so

that it appears on the face of the statute that "it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights," it is not a prohibited burden on interstate commerce, but is a valid exercise of the power of the State to tax.

## 14

The Court erred in failing to find that the machines of application in the case at bar, viz., the compressors, can be operated by steam or electricity, in addition to the mechanical energy or power produced, generated or manufactured by internal combustion gas engines, as in the case at bar.

## 15

The Court erred in granting the permanent injunction herein against respondent and in favor of complainant.

## Prayer for Reversal

Wherefore, for each and all of the reasons set forth in the foregoing assignment of errors, respondent prays that [fol. 182] the decree herein appealed from be reversed, and complainant's suit be dismissed in accordance with the prayer contained in the answer filed herein by respondent.

E. Leland Richardson; Solicitor for Respondent.

[fol. 183] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 30, 1937

This day came respondent and filed herein his petition for appeal to the Supreme Court of the United States from the final decree herein rendered by this Court of the 22nd day of May, 1937, and filed also his Assignment of Errors in support of said petition.

Therefore, it is Ordered by the Court:

(1) That the appeal to the Supreme Court of the United States prayed for by respondent, as set forth in his peti-

tion for appeal, be and the same is hereby allowed as prayed for in said petition.

(2) That a transcript of such parts of the records and proceedings herein as the parties may by præcipe duly designate be transmitted, duly authenticated, to the Supreme Court of the United States in the manner provided by law.

(3) That a citation be issued, admonishing the defendants, and each of them, to be and appear in the Supreme Court of the United States within thirty days from this date as provided by law.

[fols. 184-186] (4) That an appeal bond for costs and damages upon said appeal in the penal sum of Five hundred & no/100 (\$500.00) — shall be given by respondent conditioned as provided by law.

Monroe, Louisiana, July 26th, 1937.

(Sgd.) Rufus E. Foster, United States Circuit Judge.

Ben C. Dawkins, United States District Judge.

Wayne G. Borah, United States District Judge.

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[fols. 187-188] Bond on appeal for \$500.00, approved and filed August 3, 1937; omitted in printing.

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[fol. 189] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER EXTENDING TIME FOR FILING TRANSCRIPT—Filed August 21, 1937

On motion of E. L. Richardson, Assistant Attorney General of Louisiana, and on suggesting to the Court that an appeal was granted the defendant in the above entitled and numbered cause from the District Court of the United States for the Western District of Louisiana to the Supreme Court of the United States, Washington, D. C., returnable within thirty (30) days from the 26th day of July, 1937, and

On further suggesting to the Court that the Clerk of the District Court has been unable to complete the prepara-



tion of the record in said cause to be transmitted to the Supreme Court of the United States in the City of Washington, D. C., and

On further suggesting to the Court that the Clerk of said United States District Court advises that several records in other cases will have to be prepared before the record in the case at bar is completed because appeals in the other cases were filed prior to the appeal in case at bar, and that mover desires an additional extension of time of sixty (60) days herein, for transmission and filing of record in the Supreme Court of the United States.

[fol. 190] It is ordered that mover be granted an extension of time of sixty (60) days, up to and including the 22nd day of October, 1937, as time in which to transmit and file the transcript of record on appeal herein to the Supreme Court of the United States, Washington, D. C.

Monroe, Louisiana, August 21, 1937.

Ben C. Dawkins, United States District Judge, Western District of Louisiana.

[File endorsement omitted.]

---

[fol. 191] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA

Equity Journal

MINUTES OF COURT

Friday, New Orleans, Louisiana, November 23, 1934

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster; Circuit Judge, Hon. Wayne G. Borah, District Judge, Hon. Ben C. Dawkins, District Judge.

No. 615. Eq.

ARKANSAS-LOUISIANA PIPE LINE COMPANY

VS.

MILTON COVERDALE, Sheriff & Ex-Officio Tax Collector of the Parish of Ouachita, La.

This cause came on this day to be heard before the Court on the application and rule filed on behalf of the plaintiff for a preliminary injunction herein, as well as upon the ex-

ception to the jurisdiction, plea of non-joinder and the motion to dismiss filed on behalf of the defendants.

Present:

Robert Roberts, Jr., and Leon O'Quinn, Esquires, Solicitors for the Plaintiffs.

J. C. Daspit, J. B. Dawkins and Fred A. Blanche, Esquires, Solicitors for the Defendants.

Whereupon, after hearing the pleadings read, and the arguments of counsel for the respective parties, the matter was submitted and the Court took time to consider. It is ordered that the restraining order heretofore issued herein remain in full force and effect pending the determination of this matter by the Court.

Documents filed by defendants:

1. Exception
2. Plea of non-joinder and motion to dismiss
3. Motion to dismiss
4. Answer and return to rule to show cause.

Ordered that court adjourn.

[fol. 192] EASTERN DISTRICT OF LOUISIANA

Saturday, New Orleans, Louisiana, December 7, 1935

Before Hon. Joseph C. Hutcheson, Judge; Hon. Wayne G. Borah, Judge; Hon. Ben C. Dawkins, Judge.

No. 615

ARKANSAS-LOUISIANA PIPE LINE COMPANY,

vs.

MILTON COVERDALE, Sheriff

No. 618

UNION SULPHUR COMPANY

vs.

ALICE LEE GROSJEAN, Supervisor Public Accounts, State of Louisiana, etc.

The above numbered and entitled causes came on this day to be heard,

Present:

Cullen R. Liskow, Esquire and Leon O'Quinn, Attorneys for Complainants.

**J. C. Daspit, Esquire, and E. L. Richardson, Esquire,  
Attorneys for Defendants.**

and were argued by counsel for the respective parties.

After hearing arguments of counsel, the Court took the matter under advisement.

Ordered that court adjourn.

[fol. 193] **WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION**

**Friday, New Orleans, Louisiana, February 12, 1937**

**Proceedings before: Hon. Rufus E. Foster, Circuit Judge;  
Hon. Ben C. Dawkins, District Judge; Hon. Wayne G. Borah,  
District Judge.**

**In Equity. No. 615**

**ARKANSAS-LOUISIANA PIPE LINE COMPANY**

**VS.**

**MILTON COVERDALE, Sheriff of Ouachita Parish, La.**

This cause came on this day upon the pleadings, exhibits, affidavits, evidence and testimony offered on behalf of the respective parties

**Present:**

**Leon O'Quinn, Esq., Solicitor for the Plaintiff.**

**E. L. Richardson, Esq., Special Assistant to the Attorney  
General, State of Louisiana, Solicitor for the Defendant,**

and was argued by counsel for the respective parties and submitted, when the Court took time to consider.

One week allowed to file briefs.

**Court Adjourned.**

**Decree (in the transcript) Signed May 24th, 1937.**

[fol. 194]

[File Endorsement Omitted]

## IN UNITED STATES DISTRICT COURT

[Title omitted]

APPELLANT'S PRECIPUE FOR RECORD—Filed July 30, 1937

To the Clerk of the United States District Court for the Western District of Louisiana:

You are hereby requested in making up the Transcript of Record for the Supreme Court of the United States in the above entitled matter to include therein the following:

1. Bill of Complaint filed by the Arkansas-Louisiana Pipe Line Company, together with Affidavit, Restraining Order and Rule to Show Cause, all of which were filed October 15, 1934.

2. Order Continuing Restraining Order in Effect, filed November 23, 1934.

3. Opinion of the Court Granting Preliminary Injunction, filed April 15, 1935.

4. Motion for Rehearing and New Trial, filed by Milton Coverdale, on April 26, 1935.

5. Opinion of the Court Granting New Trial, filed July 26, 1935.

6. Opinion of the Court granting Preliminary Injunction, filed February 4, 1936.

7. Opinion of Judge Joseph C. Hutcheson, Jr., dissenting to the issuance of preliminary injunction, filed February 4, 1936.

8. Order Granting Interlocutory Injunction, filed February 21, 1936.

9. Answer to the Merits, filed by Milton Coverdale, January 5, 1937.

10. Affidavits filed by complainant, Arkansas-Louisiana Pipe Line Company, as follows:

[fol. 195] T. W. Johnson, dated Dec. 18, 1936, filed February 12, 1937.

H. T. Goss, dated December 18, 1936, filed February 12, 1937.

H. T. Goss, dated December 17, 1935.

Paul Weeks, dated November 17, 1934, filed November 17, 1934.



W. E. Nestor, dated November 17, 1934, filed November 17, 1934.

M. J. Lasseigne, dated November 17, 1934, filed November 17, 1934, together with exhibits attached thereto.

Walter A. Stewart, dated November 17, 1934, filed November 17, 1934, together with exhibits attached thereto.

Robert H. Johnston, dated November 17, 1934, filed November 17, 1934.

W. H. Buckley, dated November 17, 1934, filed November 17, 1934, together with exhibits attached.

11. Affidavits filed by respondent, Milton Coverdale, as follows:

A. B. Singletary, Jr., dated May 15, 1936, filed February 12, 1937, together with Exhibits A and B attached thereto.

A. B. Singletary, Jr., dated December 8, 1936, filed February 12, 1937.

A. B. Singletary, Jr., dated January 19, 1937, filed February 12, 1937.

G. F. Matthes, dated May 15, 1936, filed February 12, 1937.

F. J. Mechlin, dated November 16, 1936, filed February 12, 1937.

Ellis P. Gaudet, dated November 19, 1936, filed February 12, 1937, including Exhibits 1, 2, 3, 4, and 5.

Hamilton Johnson, dated November 21, 1936, filed Feb. 12, 1937.

B. C. Craft, dated November 23, 1936, filed February 12, 1937.

12. Stipulation as to Record, dated January 19, 1937, filed February 12, 1937.

13. Motion filed by Arkansas-Louisiana Pipe Line Company, complainant, to abandon all contentions with certain exceptions, filed February 12, 1937.

14. Opinion filed May 24, 1937, granting permanent injunction.

15. Decree filed May 24, 1937, granting permanent injunction.

[fol. 196] 16. Order of Court that opinion rendered May 22, 1937, and filed May 24, 1937, shall stand as findings of fact and conclusions of law under Rule 70½, dated July 26, 1937.

17. Exceptions of Respondent, Milton Coverdale, to findings of fact and conclusions of law.
18. Petition for appeal.
19. Assignment of Errors.
20. Order allowing appeal.
21. Bond on Appeal.
22. Citation and Service.
23. Notice Pursuant to Rule 12 of the Rules of the Supreme Court of the United States.
24. This Præcipe, together with proof of service.
25. Any application and orders made extending time within which to file record with the Supreme Court of the United States.
26. All papers filed under authority of Rule 12 of the Supreme Court, as required by Paragraph 4 of Rule 12.
27. Affidavit showing proof of service on appellee of petition and order of appeal, assignment of errors, typewritten statement required by Section 1, Rule 12, and statement directing attention to Paragraph 3 of Rule 12, executed by E. L. Richardson on July 29, 1937.

The transcript of this matter is to be prepared by law and the rules of the United States Supreme Court.

(Sgd.) Gaston L. Porterie (by E. L. R.), Attorney General of Louisiana. J. C. Daspit (by E. L. R.), Assistant Attorney General of Louisiana. F. A. Blanche (by E. L. R.), Assistant Attorney General of Louisiana. E. Leland Richardson, Assistant Attorney General of Louisiana.

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[fol. 197] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 198] Citation, in usual form, showing service on Leon O'Quin, filed August 7, 1937, omitted in printing.

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[fol. 199] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
AS TO PRINTING RECORD—Filed September 29, 1937

Comes now Milton Coverdale, appellant, in the above entitled cause and adopts his Assignment of Errors as his

statement of the points to be relied upon, and states that the whole of the record as filed is necessary in a consideration of the case.

E. Leland Richardson, Solicitor for Appellant.

[fol. 200] Proof of Service of Statement of Points to Be Relied upon and Designation as to Printing Record

E. Leland Richardson being duly sworn did depose and say:

That as solicitor for Milton Coverdale, Sheriff and Ex-Officio Tax Collector, appellant in the above numbered and entitled cause, he did on Sept. 20th, 1937, serve on appellee a true copy of the following:

1. Statement of points to be relied upon and designation as to printing record.

That said service was made by enclosing a copy of said document in an envelope addressed to Leon O'Quin, First National Bank Building, Shreveport, Louisiana, who is attorney of record for the Arkansas-Louisiana Pipe Line Company, appellee in the case at bar, said envelope being sent by Registered Mail, Return Receipt Requested, deposited in the Post Office at Baton Rouge, Louisiana.

E. Leland Richardson.

Sworn to and subscribed before me this 20th day of Sept., A. D. 1937. W. A. Cooper, Notary Public.  
(Seal.)

[fol. 201] [File endorsement omitted]

Endorsed on cover: File No. 41,939. W. Louisiana D. C. U. S. Term No. 458. Milton Coverdale, Sheriff and Ex-Officio Tax Collector, appellant, vs. Arkansas-Louisiana Pipe Line Company. Filed September 29, 1937. Term No. 458, O. T., 1937.

FILE COPY

Miss - Bureau Dept. H. S.

No. 453

MISSISSIPPI OVERSEAS

MISSISSIPPI

ARKANSAS LOUISIANA

MISSISSIPPI OVERSEAS

MISSISSIPPI OVERSEAS

MISSISSIPPI OVERSEAS



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IN THE  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION.

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IN EQUITY.

**No. 615**

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ARKANSAS-LOUISIANA PIPE LINE COMPANY,  
*Complainant,*

vs.

MILTON COVERDALE, SHERIFF AND EX-OFFICIO TAX  
COLLECTOR,  
*Respondent.*

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STATEMENT REQUIRED BY RULE 12, SECTION 1,  
OF THE SUPREME COURT.

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The appeal herein is from a decree granting a permanent injunction rendered and filed May 22, 1937, by a specially constituted District Court of the United States. (J. C. 266, 28 U. S. C. A. 380.)

Under Sections 238 and 266 of the Judicial Code (28 U. S. C. A. 345 and 380), a direct review is allowed, and a direct appeal may be taken, to the Supreme Court of the



United States upon a decree granting a permanent injunction.

The Statute herein involved is Act No. 6 of the Regular Session of the Louisiana Legislature for 1932. Act No. 6 of the Regular Session of the Louisiana Legislature for 1932 is to be found at page 36 of the Official Edition of the Acts of the Louisiana Legislature passed at the Regular Session for 1932.

The provisions of said Act deemed pertinent are summarized as follows:

Act 6 of 1932 was passed at the Regular Session of the Louisiana Legislature for the purpose of providing additional revenue for the State of Louisiana by levying an excise, license or privilege tax on persons, firms, corporations or associations of persons engaged in certain named businesses.

Section 1 of said Act provides that, in addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of 2 per cent per annum of the gross receipts from the sale of the electricity so manufactured or generated in the State, except the receipts from that portion of said electricity sold for resale.

Section 2 provides that in addition to all other taxes now imposed by law, every person, firm, corporation or association of persons engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light or power in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of 2 per cent per annum of the gross receipts from the sale of such electricity not manufactured or generated by him

or it, sold in the State, except the receipts from that portion of said electricity sold for resale.

Section 3 of the Act provides that, in addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horse power, and does not procure all of the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1, or Section 2 of this Act, shall be subject to the payment of an excise, license or privilege tax of One (\$1.00) Dollar per annum for each horse power of capacity of the machinery or apparatus known as the "prime mover" or "prime movers," operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all, or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this Act, shall not be liable for the tax imposed by Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during the periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons, the principal use of whose electrical facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horse power capacity of any machinery or apparatus used in the generation of electricity. Section 3 also provides

for certain exceptions, including the proviso that in computing the tax imposed by Section 3, there shall be excluded from the horse power of capacity of machinery or apparatus operated for the purpose of producing power to be used in propelling or motivating any automobile, truck, tug, vessel or other self-propelling vehicle on land, water or air.

Section 4 of the Act provides that every person, firm, corporation or association of persons keep certain records, and provides for a penalty for failure to comply with the provisions of the Act in this respect.

Section 5 of the Act names the Supervisor of Public Accounts of Louisiana as the authority to collect the tax levied by the Statute.

Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Act provide for the collection of the tax levied by the Statute and other details pertaining to the enforcement of the provisions of same.

On October 15, 1934, the Arkansas-Louisiana Pipe Line Company, a Delaware Corporation doing business in Louisiana, filed a suit in the Monroe Division of the United States District Court, Western District of Louisiana, which suit bears No. 615 on the Equity Docket of said court, against Milton Coverdale, Sheriff and Ex-Officio Tax Collector for the Parish of Ouachita, Louisiana, who, under Section 8 of the Act involved, is required, under the direction of the Supervisor of Public Accounts, to seize and sell sufficient property of the tax debtor to pay any taxes that may be due by the tax debtor under the Act.

In said proceeding, complainant sought a preliminary injunction, and finally a permanent injunction, enjoining and restraining said Sheriff and Ex-Officio Tax Collector from collecting from complainant any taxes under Act 6 of 1932. Complainant's intrastate operations in Louisiana,

which the State contends makes it liable for the tax levied by said Statute, are that complainant owns and operates ten one thousand horse power internal combustion gas engines, or prime movers, and two two hundred-fifty horse power internal combustion gas engines, or prime movers, at its Munce Station in Ouachita Parish, Louisiana, all of which are used to produce, convert, generate or manufacture mechanical energy from the heat energy in natural gas. Complainant attacked Act 6 of 1932 as being violative of both the Federal and State Constitutions. Among the grounds of attack enumerated in the bill of complaint are the following:

That the Statute contravenes Article 1, Sections 8 and 10 of the Constitution of the United States reserving to the Congress of the United States the sole power to regulate commerce between the several states; that the tax levied by Act 6 of 1932 is a property tax exceeding the rate provided by Article 10, Section 3 of the Constitution of Louisiana for the year 1921, and constitutes double taxation, and is contrary to the provisions of Article 10, Section 1 of the Constitution of 1921; that the Statute in question denies to petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution in that those who purchase power are subjected to a lesser rate of taxation than imposed upon petitioner, the owner of machinery from which the power necessary for the conduct of its business is generated; that the Statute in question denies to petitioner, and those similarly situated, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution in that it arbitrarily discriminates between petitioner and others similarly situated and between persons and corporations purchasing power in the form of electrical energy in the conduct of similar business enterprises by exempting such other persons and corpora-



tions from the payment of the tax upon engines owned, maintained and used by them as "stand-by" or emergency facilities, when petitioner and those in similar circumstances having and maintaining such "stand-by" or emergency facilities are granted no exemption therefor.

On October 25, 1934, a specially constituted three-judge district court heard the rule to show cause why the interlocutory injunction should not issue as prayed for. The court, on April 15, 1935, granted a preliminary injunction for the reasons stated in the opinion in the case at bar, 17 Fed. Supp. 34, and for the further reasons stated in the opinion rendered on the same day in the case of *Union Sulphur Company v. Reid, Sheriff*, involving the same issues and the same Statute, 17 Fed. Supp. 27, with the exception that the latter case did not involve the question of the tax being a direct burden on interstate commerce.

Respondent applied for rehearings in both the case at bar and *Union Sulphur Company v. Reid, supra*, which applications were granted. 17 Fed. Supp. 36, 17 Fed. Supp. 32.

On rehearing on the question of whether or not a preliminary injunction should issue, the court, in the case of *Union Sulphur Company v. Reid* (opinion filed February 4, 1936, 17 Fed. Supp. 32), upheld the validity of Act 6 of 1932, and refused the issuance of an interlocutory injunction. On rehearing in the case at bar, *Arkansas-Louisiana Pipe Line Company v. Coverdale* (opinion filed February 4, 1936, 17 Fed. Supp. 36), a majority of the court held that, in so far as the Arkansas-Louisiana Pipe Line Company is concerned, the tax levied by Act 6 of 1932 is a direct burden on its interstate operations and therefore violative of the commerce clause of the Federal Constitution, and issued a preliminary injunction enjoining the Sheriff and Ex-Officio Tax Collector of Ouachita Parish from collecting said tax from complainant for that reason. One judge dissented, however, and held in a written opinion that the tax levied by

Act 6 of 1932 is not a direct burden on complainant's interstate business, and is not violative of the commerce clause of the Federal Constitution. See *Arkansas-Louisiana Pipe Line Company v. Coverdale*, 17 Fed. Supp. 38, opinion filed Feb. 4, 1936. The opinions of the court in these two cases on rehearing, with the exception of the commerce feature in the *Arkansas-Louisiana Pipe Line* case, were based on a decision of the Louisiana Supreme Court in the case of *State ex rel. Porterie v. Hunt*, 182 La. 1073, 162 So. 777, 103 A. L. R. 9, rendered subsequent to the first opinions handed down by the court issuing preliminary injunctions.

On February 12, 1937, a specially constituted three-judge district court for the Western District of Louisiana heard the question of whether or not the interlocutory injunction previously issued in the case at bar on the ground that the tax levied by Act 6 of 1932 is a direct burden on interstate commerce, should be made permanent. The Circuit Judge who dissented from the majority opinion holding the tax a direct burden on interstate commerce did not sit when the case was heard on the question of whether or not the preliminary injunction issued by two members of the former court should be made permanent.

The Court, on the merits in the case at bar in an opinion filed May 22, 1937, held the tax levied by Act 6 of 1932, a direct burden on the interstate commerce conducted by complainant and is, therefore, violative of the commerce clause of the Federal Constitution, and by decree signed on May 22, 1937, made permanent the preliminary injunction previously issued.

Cases believed to sustain the jurisdiction are *Safety Deposit Trust Company v. Virginia*, 280 U. S. 83; *Provident Savings Association v. Kentucky*, 239 U. S. 103; *Bethlehem Motors Corporation v. Flynt*, 256 U. S. 421; *Fidelity and Deposit Company of Maryland v. Tafoya*, 270 U. S. 426; *Frick*

*v. Pennsylvania*, 268 U. S. 473; *Delaware, L., etc., Railroad Company v. Pennsylvania*, 198 U. S. 341; *Louisville, etc., Ferry Company v. Kentucky*, 188 U. S. 385; *New York Life Insurance Company v. Head*, 234 U. S. 149; *Western Union Telegraph Company v. Kansas*, 216 U. S. 1; *Looney v. Crane Company*, 245 U. S. 178; *Airway Electric Appliance Corporation v. Day*, 266 U. S. 71; *Hans Rees' Sons v. North Carolina*, 283 U. S. 122; *Cooney v. Mountain States Telephone & Telegraph Company*, 294 U. S. 384; *Colgate v. Harvey*, 296 U. S. 404; *Stewart Dry Goods Company v. Lewis*, 294 U. S. 550.

The date of the decree sought to be reviewed is May 22, 1937, and the date upon which application for appeal was presented was July 26, 1937.

A copy of the opinion delivered upon the rendering of the decree sought to be reviewed is appended hereto. See *Arkansas-Louisiana Pipe Line Company, Complainant, v. Milton Coverdale, Sheriff and Tax Collector, Respondent*, opinion filed and decree signed and filed May 22, 1937.

Also appended hereto are copies of the following opinions referred to in this statement:

*Union Sulphur Company v. Reid*, filed April 15, 1935, 17 Fed. Supp. 27;

*Arkansas-Louisiana Pipe Line Company v. Coverdale*, filed April 15, 1935, 17 Fed. Supp. 34;

*Union Sulphur Company v. Reid*, filed Feb. 4, 1936, 17 Fed. Supp. 32 (on rehearing);

*Arkansas-Louisiana Pipe Line Company v. Coverdale*, filed Feb. 4, 1936, 17 Fed. Supp. 36, including dissenting opinion (on rehearing).

E. LELAND RICHARDSON,  
Solicitor for Respondent.

**EXHIBIT "A".**

Filed April 15, 1935.

(17 Fed. Supp. 27.)

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
LAKE CHARLES DIVISION.**

No. 618. In Equity.

**UNION SULPHUR COMPANY, Complainant,**

vs.

**HENRY A. REID, Sheriff and Ex-Officio Tax Collector, et al.,  
Respondents.**

Mr. Cullen R. Liskow, Lake Charles, Louisiana, for  
Complainants.

Messrs. Gaston L. Porterie, Attorney General; Justin C.  
Daspit, Assistant Attorney General; F. A. Blanche,  
Special Asst. Atty. General, Baton Rouge, Louisiana,  
for Respondents.

**DAWKINS, J.:**

Plaintiff has attacked the constitutionality of Act No. 5 of  
the Legislature of Louisiana, for the year 1932, under both  
the Federal and State Constitutions on the grounds herein-  
after discussed. We quote Sec. 3, 6, 7 and 8 of the statute  
in question as follows:

"SECTION 3. In addition to all other taxes of every  
kind imposed by law, every person, firm, corporation or  
association of persons engaged in the State of Louisi-  
ana in any business or occupation, which person, firm,  
corporation or association of persons uses in the con-  
duct of such business or occupation, at any time, electri-  
cal or mechanical power of more than ten horsepower  
and does not procure all the power required in the con-  
duct of such business or occupation from a person, firm,



corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime-mover' or 'prime-movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugar-cane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or moving any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air."

"SECTION 6. Every person, firm, corporation or association of persons subject to the tax levied in this

act shall annually, between first day of August and the first day of September, make a true and correct return to the Supervisor of Public Accounts in such form as he may prescribe, showing the gross receipts derived from the sale of electricity manufactured and generated, and the gross receipts derived from the sale of electricity purchased, and the portion of said gross receipts derived from sales to a person, firm corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons, not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, as the case may be, the horsepower capacity of the machinery or apparatus on which the tax imposed by Section 3 of this Act is computed, in each case during the twelve month period ending on the 31st day of July next preceding the making of such return, and shall pay the tax provided for in this Act, at the time said return is made. All taxes imposed by this Act shall become delinquent on the 1st day of September.

In case of failure to make a true and correct return, as provided in this section, the Supervisor of Public Accounts shall make such return, or cause the same to be made, upon such information as he may be able to obtain, assess the tax due thereon and add a penalty of twenty-five percent (25%) to the amount of the tax for failure of the taxpayer to make the return.

That if the excise, license or privilege tax due as hereinabove provided is not paid at the time or in the manner specified, by the person, firm, corporation or association of persons owing the same, then the Supervisor of Public Accounts shall make in any manner feasible, and cause to be recorded in the mortgage records of the Parish where such person, firm, corporation or association of persons is engaged, occupied or continuing in a business or occupation subject to the tax imposed by this Act, a statement, under oath, showing the amount of the tax due by each such person,

firm, corporation or association of persons, which statement when filed for record shall operate as a first lien, privilege and mortgage on all of the property of the respective excise, license or privilege tax debtors as the case may be, and said property shall be subject to seizure and sale for the payment of said excise, license or privilege tax due."

"SECTION 7, whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen (15) days thereafter the said Supervisor of Public Accounts shall cause the sheriff and ex-officio tax collector of said parish to seize and sell for the payment of such excise, license or privilege taxes any property whatsoever belonging to the said tax debtor or debtors, as provided above, which may be found within the jurisdiction of the said sheriff and ex-officio tax collector."

"SECTION 8. The Sheriff and ex-officio tax collector of any parish when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the excise, license or privilege tax herein provided for after the recordation of the statement hereinabove provided and required and after the notice hereinabove provided for has been given; and all such seizures and sales shall be conducted in the manner and form now required for the sale of similar property for taxes and penalties shall be imposed and collected as provided by the general license laws of this State.

Any and all physical property or assets or things of value belonging to the said tax debtors are hereby declared to be subject to seizure and sale for the payment of the excise, license or privilege tax herein provided for in preference to any and all other claims, liens and privileges."

Petitioner alleges that in the conduct of its business of drilling for the production of oil and gas, engines or "prime movers", as defined in said Act are used and that it does not procure any part of its power from others subject to the tax imposed by Section 1 of the Act, that is, those engaged in the production of power for sale. It further alleges that on September 4, 1934, the Supervisor of Public Accounts caused to be filed in the mortgage records of Calcasieu Parish a statement for the period from August 1, 1932 to and including July 31, 1934, claiming \$9,601.50 as due by petitioner, and on October 23rd of the same year notified plaintiff, in accordance with Section 7 of the Act, that unless the same was paid within fifteen days, she would cause the sheriff and tax collector to seize and sell the property of the defendant to satisfy said tax, penalties and costs.

The grounds upon which the tax is assailed are as follows:

(1) That although called a license or excise tax, it is in reality an *ad valorem* or property tax, which exceeds the permissible limit fixed by Section 3 of Art. X of the State Constitution; and,

(2) The procedure prescribed for its collection does not afford due process under the Fourteenth Amendment to the Federal Constitution.

Petitioner further alleges irreparable injury and that no provision exists under the law to recover the amount claimed if paid under protest.

Jurisdiction is invoked under Section 266 of the Judicial Code (U. S. C., Title 28, Sec. 380).

Defendant has moved to strike paragraphs 8, 9, 10, 11, 15, sub-section (a) of paragraph 21, sub-sections (a), (b), (c) of paragraphs 25 and 30 of the bill, on the grounds that they amount to "conclusions of law" and "conclusions of fact", which are "contrary to the rules of pleading and practice of this court." They also answered admitting that the tax had been demanded and would be collected in the manner alleged, but otherwise in the main denied the conclusions of law and fact of the petition. They prayed that plaintiff's demand be rejected.



The application for preliminary injunction was heard by this statutory court of three judges on November 23, 1934, and on December 10th defendants filed a motion to dismiss, setting up a statute passed at an extra session of the State Legislature on December 6th of the same year, as granting a right to sue the State to recover back the taxes if found to have been illegally paid; and which it is claimed provides an adequate remedy at law.

We find nothing to sustain the contention that plaintiff could not allege or quote the provisions of the statute assailed, or that the conclusions of law or fact were improperly pleaded. No authority has been cited in support of the contention and the motion will be denied.

As to the Act of Legislature of December 6th, passed after the filing and submission of the case, there was no such remedy under the state law when the suit was filed and the matter must be governed by conditions which existed at that time. If there was no adequate remedy then, the subsequent passage of the statute in question did not have the effect of divesting this court of the jurisdiction which it had acquired even if the Act can be construed to afford such relief, as to which we express no opinion at this time. *Beedle v. Bennett*, 122 U. S. 71; *Busch v. Jones*, 184 U. S. 598; *Dawson v. Kentucky Distillers Company*, 253 U. S. 296.

We find the pertinent facts as follows:

Plaintiff is engaged in drilling wells in this State in search of and for the production of oil, gas and other minerals, and the "prime movers" or engines, whose horse power forms the basis for the tax, are used exclusively for those purposes. It produces no power for sale, nor does it purchase any from anyone else. It had been duly assessed and paid its property or *ad valorem* taxes, up to the full constitutional and statutory limit, upon the engines in question, and made no return as to the tax in contest, as required by the statute assailed. The Supervisor determined a tax liability for the period in question of \$9,601.50, filed the statement in the mortgage records, caused the required notice to be sent and would have proceeded with the enforced collection as provided by the statute but for the

preliminary restraining order issued herein. At the time of filing this suit there was no provision in the Act itself or otherwise in the state law under which the plaintiff could have paid the tax under protest and then sued for its recovery; but since the writ was issued, the Legislature has passed an act purporting to give such a remedy.

### *Conclusion of Law.*

The general property tax is imposed and limited by Section 3, Article X of the State Constitution, which we quote, as follows:

"The rate of State taxation on property for all purposes shall not exceed in any one year, five and one-quarter mills on the dollar of its assessed value; provided, the Legislature may, by a vote of two-thirds of the members elected to each house, increase such rate to not more than five and three-quarter mills on the dollar."

We also quote Section 8 of Article X, with respect to license taxes:

"SECTION 8. (As amended by Act 77 of 1934.) License taxes may be levied on such classes of persons, associations of persons and corporations pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, except clerks, laborers, ministers of religion, school teachers, graduated trained nurses, those engaged in mechanical, agricultural or horticultural pursuits or in operating saw-mills. Such license taxes may be classified, graduated or progressive. No political subdivision shall impose a greater license tax than is imposed for State purposes, provided that this restriction shall not apply to dealers in malt, vinous, distilled, alcoholic, spiritous or intoxicating liquors; but when an income tax is levied by the State, in lieu of State license taxes, this shall not prohibit the levy by the political subdivisions of the State of such license taxes as the Legislature may authorize. Those who pay municipal license

taxes equal in amount to such taxes levied by the parochial authorities shall be exempt from such parochial license taxes."

As was said in *Dawson v. Kentucky Distillers Company*, *supra*, the question of whether this is a property tax or a license tax is one of local law, the construction of which by the court of last resort of the state would be accepted by this court as conclusive. However, no such decision having been made, we are bound to determine this matter ourselves. In *Lionel's Cigar Store v. McFarland*, 162 La. Rep. 31, 111 So. 599, the Supreme Court of Louisiana construed the statute imposing a license tax on tobacco and tobacco products, and while some of the language of that statute gave it the appearance of a property tax, it was held to be a license tax "upon dealers", measured by the price or amount for which the merchandise was sold at retail. In the course of that opinion, the court had this to say:

"The incident or fact that makes the tax a license tax and not a property tax, is that it is not levied on or collectible from the owner of the property unless he is *engaged in the business* of selling it at retail, and it is levied and collected, then only in proportion approximately, to the amount of the retail sales". (Italics by writer of this opinion.)

To the same effect see *Fleischman Company v. Conway*, 168 La. 547, 122 So. 845, wherein it was again found that the tax in reality was imposed upon "dealers in yeast".

The present statute, at the beginning of Section 3, assailed here, says that the tax is imposed upon "every person, firm, or corporation or association of persons engaged in the state . . . in any business or occupation which . . . uses in the conduct of said business or occupation" such power. It would have meant the same thing, we think, if it had left the words "any business or occupation" out and simply said that the tax should be collected from anyone using such power, for it is perfectly clear that the tax is not upon the business but upon the use of the power. This idea is further reinforced by the

title, which, after declaring the object of the statute to be the "levying an excise license or privilege tax on persons \* \* \* engaged in the business of manufacturing or generating or selling electricity \* \* \*", adds "and on persons \* \* \* engaged in certain other businesses or occupations using electricity or mechanical power \* \* \*". The first clause of this title clearly expresses the purpose to impose a license tax upon one class of business, to-wit: that of producing electricity for sale; whereas, the succeeding clause states it is to be imposed upon anyone who uses power in any kind of business or occupation, regardless of its nature, save the excepted classes (where it is used in horticultural, mechanical or agricultural pursuits which are exempted by Sec. 8, Art. X of the State Constitution from license taxes). There is patently no attempt to classify the many different kinds of businesses which may use such power or to grade the tax according to the volume or amount of business done or power consumed, as seems to be contemplated by Section 8 of Article X of the State Constitution, and as had been done uniformly in statutes imposing license taxes in the past.

As was also pointed out in *Dawson v. Kentucky Distillers Company, supra*, the tax is imposed upon the one thing which makes the property valuable, to-wit, its use, whether owned, leased or what not; it may be owned, sold, or leased without incurring the tax, provided it is not used, but the moment anyone uses it, the tax becomes due and is subject to enforcement through the recording and execution of a lien against the machinery. The result is no different to what it would be if the tax were laid upon the number of cylinders or pistons. It is the same in amount whether the engine is used one hour or every day in the year, to-wit, \$1.00 per horse power for the year.

*Ad valorem* taxes are levied upon specific property, usually assessed to the owner and collected through the summary process of seizure and sale. The present tax is required to be realized in the same way, and in addition to the usual lien against the specific property resulting from the filing of the tax roll, there is created against all of the property of the tax debtor a similar lien, for the



recovery of which suit is not to be brought as required with respect to other license taxes, but must be enforced in the manner above stated. We are, therefore, constrained to hold that it is a property tax.

We also think the Act violates the due process clause of the 14th Amendment to the Federal Constitution, in that it makes no provision for a hearing or review of the action of the Supervisor in determining the tax, as will be seen from Section 7, quoted above. It will be noted that that section merely requires the giving of notice "of the recordation of such statement" after it has become a lien upon the property "and fifteen days thereafter" the supervisor must "cause the sheriff to seize and sell the property", with no provision anywhere in the act or any other law of the State for a hearing as to its correctness. To be of any value, the notice must have some purpose other than simply to permit the payment of the tax so determined to avoid the seizure of the property. When the amount has been determined in the manner provided by the statute, without previous notice and recorded, nothing is left to the Supervisor but to give notice and enforce collection in the manner stated, for she is given no authority to hear or determine complaints by the taxpayer and hence no opportunity to be heard by the latter. *Central of Georgia Railway Co. v. Wright*, 207 U. S. 127; *Jackson Lumber Company v. McCrimmon*, 164 Fed. 759; and when the penalties are so severe "as to deter him, (the taxpayer) from asserting that which he believed to be his right," this within itself is a denial of due process and the equal protection of the law. *Wadley Southern Railroad Co. v. Georgia*, 235 U. S. 218. The statute under consideration here imposes a penalty of twenty-five percent "for failure of the taxpayer to make the return" and the recordation of the statement creates a lien, not alone upon the machine or "prime mover", but "on all of the property . . . of the tax debtor" and is so harsh as to fall under the principle of the case just cited.

Our conclusion is that for the reasons stated a preliminary injunction should be granted.

(Signed)

RUFUS E. FOSTER,  
*U. S. Circuit Judge.*

(Signed)

BEN C. DAWKINS,  
*U. S. District Judge.*

(Signed)

WAYNE G. BORAH,  
*U. S. District Judge.*

### EXHIBIT "B".

Filed April 15, 1935.

(17 Fed. Supp. 34.)

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
MONROE DIVISION.

No. 615. In Equity.

ARKANSAS-LOUISIANA PIPE LINE COMPANY, *Complainant,*

*vs.*

MILTON COVERDALE, *Sheriff and Ex-Officio Tax Collector,*  
*Respondent.*

Messrs. Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Shreveport, Louisiana, for Complainant.

Mr. Justin C. Daspit, Baton Rouge, Louisiana, for Respondent.

DAWKINS, J.:

In this case, identical provisions of the Act, No. 6, of the Louisiana Legislature for the year 1932, are attacked as unconstitutional for the same reasons urged in the case of Union Sulphur Company *v.* Reid, Sheriff and Tax Collector, *et al.*, No. 618 in Equity, this day decided, and on the addi-

tional ground that they impose an undue burden upon interstate commerce. Defendant has filed an exception of non-joinder, in that the Supervisor of Public Accounts was a necessary and indispensable party defendant; and otherwise opposed the granting of the preliminary injunction upon the same grounds.

Decisions of the state court have repeatedly held that the validity of a tax may be contested against the sheriff and tax collector alone where he was proceeding to sell property in execution of a tax lien. *K. C. S. Railway Co. v. Skinner*, 145 La. 25, 81 So. 743; *L. & A. Ry. Co. v. Tax Collector*, 121 La. 997, 46 So. 994; *Board of Trustees of Centenary College v. Sheriff*, 128 La. 257, 54 So. 790; *Bud v. Houston*, 36 An. 959; see also *U. S. v. Lee*, 106 U. S. 195.

The plaintiff in this case, like the Union Sulphur Company in No. 618, failed or refused to make a return, and the Supervisor determined the tax to be \$7,316.00, for the period ending July 31, 1933, added thereto 25% penalties under the statute and 10% attorney's fees, recorded a statement thereof as provided by the statute and had the sheriff seize and advertise the property of defendant for sale. The latter then filed suit in the state court, seeking to enjoin the sheriff and Supervisor of Public Accounts from selling its property, alleged to be worth \$800,000, upon substantially the same grounds as urged here. The latter excepted to the jurisdiction of the district court for Ouachita Parish, on the ground that she should have been sued in the Parish of East Baton Rouge, her official domicile, and the place where she discharges her duties. The exception to the jurisdiction was overruled by the trial court and the Supervisor applied to the State Supreme Court for a writ of prohibition, which was granted, with a stay order and the trial judge was ordered to send the record up. This had the effect of releasing the sheriff and Supervisor from the effects of the restraining order granted by the lower court and they proceeded again with the advertisement of the property for sale; whereupon the plaintiff sought relief in this court in the present action. Upon the hearing by the Supreme Court of its supervisory writ thus granted, the stay order was recalled (after the present suit had been filed) and in

passing upon the plea as to the jurisdiction, the court had this to say:

“The ruling of that court in maintaining its jurisdiction is sanctioned by reason and supported by precedent. Plaintiff is engaged in business in the Parish of Ouachita and its property is there. The lien is recorded there and there it has effect against the property of the alleged debtor, and it is there that an attempt is being made to enforce it. The method set up by the act to enforce payment of the tax is the seizure and sale of the property of the tax debtor, and if a sale is made, it must be made where the property is situated. In sum, the enforcement or execution of the lien which came into existence by virtue of the recorded sworn statement made by the Supervisor of Public Accounts must take place in the Parish of Ouachita, where the property is situated.

It is alleged, and not denied, that if the sheriff of Ouachita Parish is not restrained by the Court, he will sell Plaintiff's property, and it is alleged that a sale of plaintiff's property under this process will result in irreparable injury to it. It is manifest that plaintiff's only remedy was to enjoin the executing officer, the sheriff, from making the sale. The real object of the suit, therefore, was to obtain the injunction and the issue as to the validity of tax was raised by the injunction.”

It then proceeded to cite and analyze numerous decisions, sustaining the jurisdiction of the lower court where the property was situated, and finally concluded:

“The reason for the rule is that when property is seized and about to be sold under process of this kind, the alleged debtor must arrest the sale in order to obtain relief, for if he allows his property to be sold and the tax collected, he has no remedy under the act to recover the amount, even if the tax should be held to be illegal. The suit for injunction is, therefore, the main demand and the invalidity of the tax is plead as



a ground for the injunction. The court of East Baton Rouge Parish, where the Supervisor has her official domicile, would have no jurisdiction to arrest a sale about to take place in Ouachita.

If the sole purpose of the suit had been to reduce the assessment made by the Supervisor, or to correct it, the court at her domicile would have had jurisdiction, because she made the assessment there, and, if a change should be made, she would have to make it there, and the suit should be brought where she performs her official functions. *N. O. G. N. R. R. Co. v. Thomas, Assessor, et als., supra.*

But in this case, the Supervisor did more than make the assessment; she caused it to be filed and recorded in the Parish of Ouachita, where the property affected is situated, and caused the sheriff to seize and advertise it for sale."

We find the facts as follows:

Plaintiff is engaged in the transporting of natural gas purchased in this State from producers, and 96.6% of which is carried by pipe line into and sold in the states of Texas and Arkansas. The engines or "prime movers" are used in compressor stations for pumping said gas through its lines. Having failed to make a return, the Supervisor determined the amount of the tax to be \$7,316.00, added thereto the penalty of 25%, as well as 10% attorney's fees on the whole, recorded a statement thereof in the mortgage records and caused the sheriff and tax collector to seize and advertise for sale property valued at several hundred thousand dollars, in satisfaction thereof. Thereupon this suit was filed and a restraining order granted under the circumstances above set out.

The defenses are substantially the same as in the case of Union Sulphur Company against Reid, Sheriff and Tax Collector, No. 618, this day decided.

### *Conclusions of Law.*

We are of the view that the tax is invalid for the reasons given in the opinion of the Union Sulphur Company case, and also because it imposes an undue burden upon interstate commerce. The engines driving the pressure pumps which force the gas through the lines into other states are just as much instruments of interstate commerce as are the locomotives of an interstate railroad or the motive power of a ferry-boat operating across a river separating two states. So that even if the tax could be held a license tax it could not be sustained as to the business in which plaintiff is engaged, *Helson v. Kentucky*, 279 U. S. 245; *Sprout v. South Bend*, 277 U. S. 163; *Glouster Ferry Co. v. Pennsylvania*, 114 U. S. 196; *Pickard v. Pullman Car Company*, 117 U. S. 34; see also *State Tax Commission v. Interstate Natural Gas Company*, 284 U. S. 41; *Pennsylvania v. West Virginia*, 260 U. S. 553; *West v. Kansas Natural Gas Company*, 221 U. S. 229; *Pennsylvania Gas Company v. Public Service Commission*, 252 U. S. 23.

For the reasons assigned, the preliminary injunction will be granted.

RUFUS E. FOSTER,  
U. S. Circuit Judge.  
BEN C. DAWKINS,  
U. S. District Judge.  
WAYNE G. BORAH,  
U. S. District Judge.

**EXHIBIT "C".**

Filed February 4, 1936.

(17 Fed. Supp. 32.)

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
LAKE CHARLES DIVISION.**

No. 618. In Equity.

**THE UNION SULPHUR COMPANY, Complainant,***vs.***HENRY A. REID, Tax Collector, et al., Respondents.****Mr. Cullen R. Liskow, Lake Charles, Louisiana, for Complainant.****Messrs. Gaston L. Porterie, J. C. Daspit, Fred A. Blanche, E. L. Richardson, Baton Rouge, Louisiana, and Mr. C. V. Pattison, Lake Charles, Louisiana, for Respondents.****Before Hutcheson, Circuit Judge, and Dawkins and Borah, District Judges.****DAWKINS, District Judge:**

A re-hearing was granted in this case because, after our original opinion was handed down, the Supreme Court of the State, in *State ex rel. Porterie et al. v. H. L. Hunt, Inc.*, 182 La. 1073, 62 So. 777, held the tax in question to be a license or privilege tax rather than a property tax, contrary to the conclusion reached by us at the first hearing. It also decided that the Act levying the tax did not violate provisions of the State Constitution upon the same grounds as urged here. We are bound by those interpretations. *Lawson v. Kentucky Distilleries*, 255 U. S. 296. However, in argument and brief on the rehearing, counsel for complainant has contended that we are not bound by

that decision, if the tax, in its operation and effect, is in reality a property tax, and it is our duty to examine it to see whether in its results it imposes the tax burden upon the thing itself. Plaintiff relies mainly upon the case of *Dawson v. Kentucky Distilleries*, *supra*, but in that case it was distinctly held that the question of whether the tax was a property or license tax, was "one of local law, so that a decision of it by the highest court of the State would be accepted by us as conclusive." Its validity had not been passed upon by the Kentucky court of last resort. Then again, as pointed out by the Louisiana Supreme Court, no use whatever could be made of the liquors without removal from the bonded warehouses, and before this could be done the tax had to be paid; whereas, under the Louisiana Statute, the tax itself does not become due unless and until the engines are used in producing power, and then they are to be paid by whomever uses them, whether owner, lessee or anyone else. We do not find anything in the present case which justifies us in disregarding the interpretation put upon the law by the highest court of the State, and leave the tax in the category in which that court has placed it, to-wit, an "excise", "license", or "privilege" tax.

The only remaining questions are as to whether the statute violates the provisions of the federal Constitution, as alleged, guaranteeing due process and equal protection of the law.

The alleged basis of discrimination or denial of equal protection is, first, that it is a property tax which is not imposed upon those using such machinery in mechanical, agricultural or horticultural pursuits, or in propelling vehicles or vessels upon land or water, or in the air; or upon machinery using less than ten horse power. As pointed out in the decision of the State court, such taxes may be imposed upon different classes of persons, and they do not violate the equal protection provision of the federal Constitution, if there be a reasonable basis for distinction between such classes. In the present instance, the primary purpose of the statute appears to have been to impose a license tax upon the production and use of power. The



first section makes a levy of 2% on those "engaged in the business of manufacturing or generating electricity, for heat, light or power"; and Section 2 imposes the same percentage upon those "engaged in the business of selling electricity not manufactured or generated by them"; whereas, "Section 3 levies the tax complained of in the present case upon persons who use mechanical or electrical power "in the conduct of such business or occupation" as may be followed or pursued by them, and who do not "procure all of the power required" in the conduct of such business from the classes in Sections 1 and 2. Thus there is a classification of the persons taxed as between those who manufacture, who sell and who produce their own power and the tax is equal upon all those who fall in each class. Section 8 of Art. X of the State Constitution exempts from license taxes those engaged in manufacturing, agricultural and horticultural pursuits, along with certain others, and it is well settled that a State may classify businesses, professions or occupations for license tax purposes, and impose different kinds and rates upon each, or none if it sees fit, so long as there is sufficient difference to form a reasonable basis for classification. What has been done in this case, we think, in view of the holding of the State Court that it is a license tax, comes within the purview of that doctrine. C. J., Vol. 61, verbo Taxation, Sec. 35.

A further consideration of the remaining issue of due process under the federal Constitution, convinces us that we were in error in holding that the method provided by the statute for collection did not afford the taxpayer an opportunity to be heard before paying the tax. The Supreme Court of the United States, in the case of *McMillen v. Anderson*, 95 U. S. 41, in dealing with a similar statute, had this to say:

"Looking at the Louisiana statute here assailed—the act of March 14, 1873—we feel bound to say, that, if it is void on the ground assumed, the revenue laws of nearly all the States will be found void for the same reason. The mode of assessing taxes in States by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual.

By summary is not meant arbitrary, or unequal, or illegal. It must, under our Constitution, be lawfully done.

But that does not mean, nor does the phrase 'due process of law' mean, by a judicial proceeding. The nation from whom we inherit the phrase 'due process of law' has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation. We need not here go into the literature of that constitutional provision, because in any view that can be taken of it, the statute under consideration does not violate it. It enacts that, when any person shall fail to (or) refuse or (to) pay his license tax, the collector shall give ten days' written or printed notice to the delinquent requiring its payment; and the manner of giving this notice is fully prescribed. If at the expiration of this time the license 'be not fully paid, the tax-collector may, without judicial formality, proceed to seize and sell, after ten days' advertisement, the property' of the delinquent, or so much as may be necessary to pay the tax and costs.

Another statute declares who is liable to this tax, and fixes the amount of it. The statute here complained of relates only to the manner of its collection.

Here it is notice that the party is assessed, by the proper officer, for a given sum as a tax of a certain kind,\* and ten days' time given him to pay it. Is not this a legal mode of proceeding? It seems to be supposed that it is essential to the validity of this tax that the party charged should have been present, or had an opportunity to be present, in some tribunal when he was assessed. But this is not, and never has been, considered necessary to the validity of a tax. And the fact that most of the States now have boards of revisers of tax assessments does not prove that taxes levied without them are void.

. . . . .

But however that may be, it is quite certain that he can, if he is wrongfully taxed, stay the proceedings

for its collection by process of injunction. See Fouqua's Code of Practice of Louisiana, Arts. 296-309, inclusive. The act of 1874 recognizes this right to an injunction and regulates the proceedings when issued to stay the collection of taxes. It declares that they shall be treated by the courts as preferred cases, and imposes a double tax upon a dissolution of the injunction.

But it is said that this is not due course of law, because the judge granting the injunction is required to take security of the applicant, and that no remedial process can be within the meaning of the Constitution which requires such a bond as a condition precedent to its issue.

It can hardly be necessary to answer an argument which excludes from the definition of due process of law all that numerous class of remedies in which, by the rules of the Court or by legislative provisions, a party invoking the powers of a court of justice is required to give that security which is necessary to prevent its process being used to work gross injustice to another."

See also *Pullman Company v. Knott*, 235 U. S. 23, wherein it was held by failing to make the return required by the statute, the taxpayer had lost his right to be heard.

For the reasons assigned, the preliminary injunction should be denied.

Proper decree should be presented.

**EXHIBIT "D".**

Filed February 4, 1936.

(17 Fed. Supp. 36.)

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
MONROE DIVISION.**

No. 615. In Equity.

**ARKANSAS-LOUISIANA PIPE LINE COMPANY, Complainant,**  
*vs.***MILTON COVERDALE, Sheriff and Tax Collector, et al.,**  
*Respondent.***Messrs. Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Shreveport, Louisiana, for Complainants.****Messrs. A. L. Davenport, J. B. Dawkins, Monroe, Louisiana; Gaston L. Porterie, J. C. Daspit, Fred A. Blanche, E. L. Richardson, Baton Rouge, Louisiana, for Respondents.****Before Hutcheson, Circuit Judge, and Dawkins and Borah, District Judges.****DAWKINS, District Judge:**

A rehearing was also granted in this case because of the decision of the Supreme Court of the State in *State ex rel. Porterie et al. v. H. L. Hunt, Inc.*, 182 La. 1073, 162 So. 777, holding the tax in question to be a license rather than a property tax. We are bound by that conclusion. (*Dawson v. Kentucky Distilleries*, 255 U. S. 296.) However, this still leaves in this case the question as to whether, as a license tax, it imposes an undue burden on interstate commerce. That natural gas, as well as crude oil are commodities, which under proper circumstances become a part of such commerce, hardly needs the citation of authority. See *West v. Kansas Natural Gas Company*, 221 U. S. 229; *Pennsylvania*



*Gas Co. v. Public Service Commission*, 252 U. S. 23; *Pennsylvania v. West Virginia*, 262 U. S. 553. As stated in our former opinion, the plaintiff purchases its gas from producers in the Monroe and Richland fields, which passes through gathering systems to its pumping station at Munce, whence it is transported by the pressure of the pumps or machinery whose horse power is the subject of this license tax, to other states. From the moment of its acquisition through the metres in the field into the gathering lines, 96.6% of its volume starts on its journey by way of the pumping station and the twenty inch main into other states. The pumps or compressors are instrumentalities used to effectuate or accomplish that journey—in fact, without them transportation of the gas in required quantities when the rock pressure is low, could not be made, since it is a substance which cannot be handled like crude oil, grain, etc. These engines, therefore, become the real and only motive power for its movement in interstate commerce. It is argued that the tax is laid upon the business of using or in business which uses power-producing engines rather than upon the machinery itself and that contention was sustained by the State court to distinguish it from a property tax. Having thus determined it to be a license tax upon a business or occupation, then it would seem clear that the business of this defendant cannot be carved into separate parts and a tax imposed upon one of those parts without affecting the other. It is a single entity, to-wit, the business of purchasing gas in one state and selling it in another, and in order to do so, plaintiff must use this machinery as a means of transportation.

Much reliance is placed upon the case of *Utah Power & Ligh- Company v. Pfost*, 286 U. S. 165. However, the Supreme Court there found there was a distinction between the two operations of the defendant company, to-wit, the manufacturing and transporting and sale of electrical power. The tax was levied upon the manufacturing. The plaintiff had a plant whose turbines were turned by water power, and which in turn converted that power into electrical energy before it was possible to transport it out of the state. The first operation, the court said, was manufacturing, subject to

local regulation and state control, notwithstanding, the energy after production, was transmitted instantaneously over wires to other states. There is no such condition in the present case, as the gas is gathered and transported in its original state, just as a freight train might pick up carloads of cotton at stations on a railroad line and carry them into other states; and if this tax can be imposed according to the number of horse power of the engines, there could be no rational reason why it could not likewise be done on the basis of number of feet or miles of pipe used. In *State Tax Commission of Mississippi v. Interstate Natural Gas Company*, 284 U. S. 41, the State had imposed a license or privilege tax "upon each person engaged or continuing in the business of operating a pipe line or transporting in or through the state oil or natural gas, through pipes." The tax was measured and graded according to the number of miles and size of pipe so used. The gas was purchased from producers in Louisiana and transported and sold in Mississippi. The gas company sold to consumers in Louisiana from 70 to 75 millions cubic feet per day and to those in Mississippi from 204 million to 520 million feet per day, and in holding the tax unconstitutional, the Supreme Court, in part, had this to say:

"The gas flows continuously from the gas fields in Louisiana and obviously for much the greater part at least, in interstate commerce. But the appellees rely upon business done under two similar contracts made in New York, to show that there was intra-state commerce in Mississippi that may be taxed without burdening the main activity that the State cannot touch. \* \* \* Distributing companies tap the plaintiff's pipe near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured by a thermometer and a meter furnished by the plaintiff, which is the only way in which it can be measured. The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between Louisiana and

Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over than to make it ready for delivery to the independent parties, who dispose of it by retail."

The judgment of the lower court holding the tax illegal as imposing an undue burden upon interstate commerce was affirmed. If a license tax, measured by the number of miles and size of the pipe used, constituted a burden upon the interstate commerce of transporting and selling the gas, how can it be said that a similar license tax, determined by the horse power of the engines used in propelling it through such pipes, is not likewise a burden upon such commerce? We are unable to see any distinction.

Another case which appears clearly applicable in principle, is that of *Cooney v. Mountain States T. & T. Co.*, 294 U. S. 384. There the State of Montana imposed a license or occupation tax upon everyone "engaged in the business of operating or maintaining telephone lines and furnishing telephone service in the State . . . for each telephone instrument used, controlled and operated by it in the conduct of such business, based upon the number of telephone instruments owned, controlled and operated by it during all or any part of the calendar year", beginning at ten cents per instrument and increasing according to the number so used, up to one dollar. The tax was assailed as imposing a burden on the interstate business of the plaintiff. Plaintiff owned 34,000 telephones and of these "more than 10,000 have actually been used in interstate and foreign commerce . . . ; plaintiff pays the usual property taxes in Montana and also the corporation license or occupation taxes, which are a percentage of its intra-state revenues . . ." It was contended the tax was imposed solely upon intra-state commerce and that it did not burden interstate commerce. However, the court found that the manner in which the tax was imposed, based upon the number of instruments, a large proportion of which were used in interstate commerce, necessarily caused it to operate upon an instrumentality used in interstate commerce; and since no means were provided in the law for separating the two



kinds of business, that is intra and inter-state, it would have to be held invalid as a whole, when applied to the business of the plaintiff. Here again we can see no distinction between a license tax based upon the number of telephones used, regardless of the frequency thereof, or revenue produced, and a similar tax gauged according to the horse power of engines likewise used for propelling natural gas through an interstate pipeline. There the telephones were used in the interstate commerce of communication; whereas, here, the engines are employed in the interstate transportation of natural gas to consumers in other states.

Our conclusion is that the tax assailed in the present case imposes an undue burden upon interstate commerce and is, therefore, invalid as to this complainant. A preliminary writ of injunction should issue.

Proper decree should be presented.

HUTCHESON, *Circuit Judge*, dissenting:

The primary purpose of the statute appears to have been to impose a license tax upon the production of power. It thus imposed not a property, but an excise or privilege tax. *Union Sulphur Co. v. Reid*, this day decided. *State ex rel. Porterie, v. Hunt*, 62 So. 777; *Brumley v. McCaughan*, 290 U. S. 124.

The majority concludes that because the tax is a privilege, and not a property tax, and falls on the generation by complainant of power, used in part to gather gas into, and in part to transport it through its transportation lines, it is a direct, an undue burden on interstate commerce. I do not think so.

The majority considers the tax a license tax upon the business or occupation of transporting gas in interstate commerce; that is, the business of purchasing gas in one state and selling it in another. I do not think so. If I could agree that the tax was occupational, levied on the general business of complainant, that of acquiring and conducting gas interstate, I could agree with the majority that the case is ruled by *Cooney v. Mountain States T. & T. Co.*, 294 U. S. 384, and that the tax is invalid. I cannot, however, agree to this. I think it quite plain that the tax is not



imposed on complainant as a license tax, for the general privilege of transacting its business. It is exacted as a specific privilege tax, for the privilege of generating power in the State. It does not at all fall upon or condition its privilege of conducting the business of transporting gas interstate.

In the Cooney case this distinction is made clear. There it is said "There is no question that the State may require payment of the occupation tax from one engaged in both intrastate and interstate commerce." *c/f* *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465." But a State cannot tax interstate commerce; it cannot lay a tax upon the business which constitutes such commerce, or the privilege of engaging in it."

The statute under attack here does not undertake to, it does not, lay a tax upon the business which constitutes interstate commerce, or the privilege of engaging in it. It exacts of complainant, who is engaged in both intra and interstate commerce, as well as of all others in the State of Louisiana similarly situated as to the use of prime movers, a privilege tax upon the generation of power in Louisiana. The uses of that power are not taxed. The business in which the power is generated is not taxed. The generation of the power, and that alone, is taxed. The measure of it is the horse power capacity of the "prime movers" employed to generate it.

The majority regards as inapplicable *Utah Power & Light Co. v. Pfof*, 286 U. S. 165. I think that case controlling. There the generation of electrical energy which was the subject of the tax was followed immediately by its transmission to other states. Here, as there, the tax is upon the production of energy. Here, as there, that production is taxable, for here, as there, the tax is laid on the manufacture or production of energy, and not on its transfer or conveyance to distant states. Here, as there, the tax is laid upon the generation of power as a distinct act of production, and without regard to its subsequent use. Here, as there, so far as complainant produces energy in Louisiana, its business is purely intrastate, subject to State taxation and control. It is only in transmitting gas across

the State lines by the use of this power that defendant is engaged in interstate commerce.

Other cases supporting this view are, *Oliver-Iron Mining Co. v. Lord*, 262 U. S. 172; *Hope Natural Gas Co. v. Hall*, 274 U. S. 284; *Coe v. Errol*, 116 U. S. 517; c/f *Federal Compress Warehouse Co. v. McLean*, 291 U. S. 17; *Carson Petroleum Co. v. Vial*, 279 U. S. 95; *Schechter Poultry Corp. v. United States*, 295 U. S. 495.

I am also of the opinion that defendant is right in its contention that if the tax may be held to be on interstate commerce, it falls on it not directly, but indirectly and therefore does not violate the Commerce Clause. *Port Richmond v. Board of Chosen Freeholders*, 232 U. S. 317; *Wiggins Ferry Co. v. East St. Louis*, 170 U. S. 365; *State v. Albert Mackie*, 144 La. 339; *Krauss Lumber Co. v. Board of Assessors*, 148 La. 1057; *Baltic Mining Co. v. Massachusetts*, 231 U. S. 68; *Hump Hairpin Mfg. v. Emerson*, 258 U. S. 290.

When a tax is as here levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that "it is clear that it is not imposed with the covert purpose, or with the effect to defeat constitutional rights", *Hump Hairpin Mfg. Co. vs. Emerson*, *supra*, it is not a prohibited burden on interstate commerce. It is a valid exercise of the power of the State to tax.

With respect, therefore, I dissent.

**EXHIBIT "E".**

Filed May 22, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
MONROE DIVISION.

No. 615. In Equity.

ARKANSAS-LOUISIANA PIPE LINE COMPANY, *Complainant*,  
vs.

MILTON COVERDALE, Sheriff and Tax Collector, *Respondent*.

Messrs. Blanchard, Goldstein, Walker & O'Quin, Shreveport, Louisiana, for Complainants.

Messrs. A. L. Davenport, J. B. Dawkins, Monroe, Louisiana; Gaston L. Porterie, J. C. Daspit, Fred A. Blanche, E. L. Richardson, Baton Rouge, Louisiana, for Respondents.

Before Foster, Circuit Judge, and Dawkins and Borah,  
District Judges.

DAWKINS, D. J.:

The issues in this case have been stated in opinions heretofore handed down on the application for preliminary injunction.

On the original hearing a preliminary writ was granted on the finding that the statute assailed violated provisions of both the State and Federal Constitutions. Shortly thereafter, the State Supreme Court sustained its constitutionality under the State Law and a rehearing was promptly granted by this Court. On the rehearing a preliminary injunction was issued for the reason we concluded the Act in question infringed the commerce clause of the Federal Constitution. The case has now been submitted on the merits.

The evidence before us is the same, except that respondent has offered additional affidavits to show the mechanical operation of the compressor station and its accessories.

together with expert opinions of the witnesses as to the effects. The purpose was to sustain the contention of respondent that there is a distinct operation amounting to a manufacture of mechanical power before it is used to force the gas through the pipe lines and to thereby demonstrate that the case is parallel to that of *Utah Power & Light Co. v. Pfof*, 286 U. S. 165, in which a similar tax was sustained. The further contention is made by defendant from these facts that the gas does not enter the stream of interstate commerce until it passes through the condensers into the twenty inch pipe line through which it is conveyed to points of sale in the States of Texas and Arkansas. There is no dispute as to the physical or mechanical nature of these operations, and we find these additional facts as described by the witnesses without, however, accepting the conclusions or opinions which they advance as to effect.

As the name indicates, the plaintiff's business is one of transporting natural gas by pipe line more than 96% of which is done in interstate commerce, as conclusively as if it operated tank cars in transporting the kindred mineral, crude oil, into the other states for sale. Naturally, gas not being susceptible of commercial transportation by the latter method, it has to be pumped through pipe lines. In conducting its business, plaintiff has the right to use as a part thereof all of the usual accessories and instrumentalities reasonably incident to its operation. See *Norfolk & Western R. R. Co. v. Pennsylvania*, 136 U. S. 114; *Ozark Pipe Line v. Monier*, 266 U. S. 555. It would seem, therefore, that it is entitled to use its compressor stations as a part of this business, free from improper State interference, equally with its pipe line. It was clearly held in *Tax Commission of Mississippi v. Interstate Gas Company*, 284 U. S. 41, that a similar excise tax could not be imposed based upon the size and mileage of the pipe line used in interstate commerce.

Does the plaintiff have any business or is it engaged commercially in doing anything other than transporting natural gas drawn from its own wells plus what it buys from others, 96% of which passes into and is sold in other States? If so, then under the doctrine of *Utah Power Company v. Pfof*, *supra*, that business or commercial operation, we think may



be taxed. The operation of its internal combustion engines is for the sole purpose of applying their power to the gas in drawing it from the wells through the gathering lines and forcing it through the main line to its destination outside of the State, just as the energy created by the burning of coal or oil in a locomotive furnishes the power to pull tank cars over a line of railroad. In the Utah Power Company case, it was shown that the tax-payer owned and operated a large power plant, in which, by applying the energy of falling water to a complete system of machines and accessories, a different valuable article of commerce was produced, to-wit, electric power. It was this article or commodity so manufactured and produced which was conveyed over its lines. On the other hand, the plaintiff takes a natural product of the earth, and, except for passing it through machines for the elimination of refuse and impurities, by the same force, transports it from the wells into other States. The power produced or created by the mechanical operation of its internal combustion engines is exclusively for that purpose. None of it is sold or transported as such away from the point of its production. The distinction, we think, is made clear by the following expression of the Supreme Court in the cited case:

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce. Appellant's chief engineer, although testifying that generation is a part of the process of transferring energy, said on cross-examination that in the process of generation there is a 'conversion' of mechanical energy in the turbine shaft into a different form of energy, that is electrical energy. It must be converted into electrical energy before it can be transmitted. \* \* \* This process of transformation is complete at the generator, and you have a greater amount of energy there, capable of doing a

greater amount of mechanical work, at the generator than you do after transmitting it into Utah.' The evidence amply sustains the conclusion that this transformation must take place as a prerequisite to the use of the electrical product, and that the process of transferring, as distinguished from that of producing, the electrical energy, begins not at the water fall, but definitely at the generator, at which point measuring appliances can be placed and the quantum of electrical energy ascertained with practical accuracy."

Utah Power & Light Company v. Pfof, 286 U. S. 180.

Our conclusion is that the attempted assimilation is metaphysical and that the business or operation cannot be dissected or torn apart so as to make of it distinct entities for the purpose of taxation, but that it must be treated as a unit and that entire unit is engaged almost exclusively in interstate commerce.

Passing now to the alternative contention of respondent, i. e., that notwithstanding the engines may be instrumentalities of interstate commerce, they may nevertheless be taxed as here undertaken. It is well settled that a State may levy taxes which indirectly affect such commerce, such as *ad valorem* taxes upon the physical property situated therein, franchise taxes, occupational or license taxes, and on the net profits of a business part of which was derived from interstate commerce. Property physically in and having its situs within the State receives the same benefits of protection from its laws, whether used in one class of commerce or the other, and may be taxed accordingly where there is no discrimination. In similar fashion, a corporation doing business within the State and for the same reasons may be required to pay franchise taxes. So, too, may corporations or individuals, engaged in interstate commerce, be taxed for the privilege of carrying on their business or pursuing their occupations where they have a domicile or business situs in the State. However, all of these are indirect taxes, since they do not bear immediately upon the commerce itself or the instrumentalities by which it is car-

ried on. On the other hand, wherever and whenever a tax has been laid upon objects or articles passing in interstate commerce, or the instrumentalities or agencies by which it is carried on, the same has been held beyond State power under the commerce clause of the Federal Constitution. See cases cited and discussed in *Helson & Randolph v. Kentucky*, 279 Fed. 245. This case cites and quotes with approval from that of *Minot v. Philadelphia, Western & B. R. R. Co.* (No. 9645), 17 Fed. Cas. 458, in which the State of Delaware had imposed an excise or privilege tax requiring that "every railroad incorporated by the State, and doing business therein, should, on the first day of January in each year thereafter, within thirty days from such time, pay to the State Treasurer a tax of One Hundred Dollars, for the use in the State of Delaware of each locomotive belonging in whole or in part to said Company, and at any time during the preceding year used by said Company, within the State of Delaware \* \* \*", twenty-five dollars for each passenger car, and ten dollars for each freight car or truck used under the same circumstances. Mr. Justice Strong, sitting on Circuit, in sustaining the plea of unconstitutionality under the commerce clause, among other things, had this to say:

"The remaining question is attended with more difficulty. I refer to the legality of the tax imposed by Section 3 of the act. That section exacts from the company the payment every year of a tax of one hundred dollars for the use in the state of each locomotive, owned in whole or in part by the company, and at any time during the preceding year used by the company, within the state. A similar tax, though less in amount, is imposed for the use in the state of each passenger, freight and truck car; for the use of the rolling stock generally. This is not a tax upon the property of the company, nor upon its franchise generally. It is not a tax upon the locomotives or the cars. It is called a tax upon their use in the state; but it seems to be rather a license fee exacted for the privilege of using rolling stock. Can such a burden be imposed? I have said the franchise can be taxed as

property, and that the property acquired or held under it is taxable; but it may be doubted whether such an exaction as this can be regarded as a tax either on the franchise or on the property of the company. Can the state, after having granted to the complainants the right to run locomotives in and through its territory freely, and also the right to use all the ordinary means of conveying freight and passengers, compel the payment of license fees for the use of those ordinary means of transportation, and that not for police purposes? Can it say to the grantee of this franchise, "True, you have purchased the right to use locomotives and cars; but if you use them you shall pay an additional price"? And is not a license fee thus exacted an additional price? I do not propose, however, to answer these questions or to decide that such an exaction is or is not an impairing of the obligation of the contract between the company and the state, for, in my opinion, the law of the state that attempts to impose this tax or duty is invalid for other reasons.

In the statement of facts to which the parties have agreed, I find the following. It is agreed 'that much the larger portion of the locomotive engines, passenger cars, freight cars, and trucks, belonging to the Philadelphia, Wilmington & Baltimore Railroad Company, were used during the year 1869 (the year for which this tax is attempted to be collected) on the aforesaid main line of railroad of said company, extending from the City of Philadelphia, in the state of Pennsylvania, through the state of Delaware to the city of Baltimore, in the state of Maryland, and for the purpose of transporting persons and property in and by a continuous course of transportation through, from, and into the said state of Delaware; that a number of engines, passenger and freight cars, and trucks, were used during the said year, on the main line from Philadelphia to a point about a mile beyond Wilmington, and thence on the line of railroad known as the 'Peninsular Lines', extending through Delaware and a part of the eastern shore of Maryland to Crisfield, and the several



branches therefrom, and that very few of either the engines, cars, or trucks, of the said company, were used exclusively within the state of Delaware during the year 1869.'

It is, therefore, admitted, that the tax or license fee is laid upon the use of locomotives, cars, etc., mainly employed in transporting persons or property through the state from other states, or into it, or out of it. Such an imposition is, in my opinion, a regulation of commerce between states. It is a prescription that passengers and merchandise shall not be carried through the state except upon certain conditions. If the tax can be imposed at all, it may be to any extent. It has often been said that when a right to tax exists it is unlimited by anything but the discretion of the legislature that imposes it. This, of course, is to be understood as applying only to cases where the state has not by contract restricted its power. Said Chief Justice Marshall, in *McCullough v. Maryland*, 4 Wheat. (17 U. S.) 316: "An unlimited power to tax involves necessarily a power to destroy, because there is a limit beyond which no institution and no property can bear taxation. A question of constitutional power can hardly be made to depend on a question of more or less. If the states may tax, they have no limit but their discretion, and the bank must, therefore, depend on the discretion of the state for existence." If this is so, the power to tax the use of all means or instruments of conveyance of persons or property through the state is the same as a power to prevent such use entirely. There is only a difference in the extent of its exercise.

I need hardly say, that a tax upon the ordinary and lawful means of transportation is practically a tax upon the thing transported.

Surely passage and transportation through a state are of this nature. If not, it is unfortunate. It is

of national importance that in regard to such objects there should be but one regulating power, for if one state can directly tax persons and property passing through it, or indirectly, by taxing the use of means of transportation, every other may; thus commercial intercourse between states remote from each other may be destroyed. The produce of Western states may be effectually excluded from Eastern markets; for though it might bear the imposition of a tax by one state it would be crushed under the weight of many."

If the respondent in this case can impose a tax based upon the horse power of the engines used in propelling the gas from one state to another, there is no limit upon its amount except legislative direction, so long as there is no discrimination. Many pipe lines, as illustrated by the one from the gas fields in the Panhandle of Texas to Chicago, pass through several states and the transportation of the gas is made possible by the use of these compressor stations. If the State where the commodity or shipment originates can impose such a burden upon those instrumentalities, we can see no logical reason why the other states, through which the gas passes en route to its destination, and in which it may be necessary to construct similar pumping or "booster" stations, may not impose similar taxes in their discretion. So that, by the time the gas reaches its destination, the cost to the consumer could be prohibitive. As the supply of natural gas in the country becomes exhausted, the desire of states in which it is produced to save it for use by its own citizens may tempt them to resort to appropriate expedients to prevent its being taken beyond their borders. That this will be attempted has already been demonstrated by the unsuccessful effort of West Virginia, in the case of *Pennsylvania v. West Virginia*, 262 U. S., 533. Should it be held that an excise tax may be validly laid upon the production of power used in such transportation, then the door is open to such abuse. We are compelled to say that the tax in this case is a direct burden upon the interstate commerce of the plaintiff and hence the section of the statute in question is con-

trary to the commerce clause of the Federal Constitution, in so far as it applies to plaintiff's business.

Since our decision on the application for preliminary injunction, the Supreme Court has handed down a number of opinions which we think clarify considerably, if they do not enlarge, the meaning of interstate commerce in its relation to business activities extending into more than one State. In *Jones & Laughlin v. National Labor Relations Board*, decided on April 12, 1937, the Act of July 5, 1935 (49 Stat., 29 U. S. C. 151), was upheld in so far as it applied to workers in the steel mills of the defendant. It is held that the business of defendant extending into many States was such that provisions of the Act of Congress in question, regulating the relations between employer and employee in interstate commerce, were applicable to employees of the appellant, although the work performed involved to some extent processes of manufacture. The *Stockyards* (*Stafford v. Wallace*, 258 U. S. 495) and *Grain Futures* (*Minnesota v. Blassius*, 290 U. S. 1) cases were cited as analagous, in that the products (ore and steel) of *Jones & Laughlin*, upon which labor was performed, were in effect in continuous passage from one State to another. In the present case the journey is actually continuous, although as is elsewhere stated herein, the gas passes through machines which extract refuse and other non-merchantable substances, as well as gasoline required by the State law. If the employees of the plaintiff in the present case, who operate the compressor stations, in the light of these latest decisions of the Supreme Court, can be said to perform their work in interstate commerce so as to be subject to the provisions of the Wagner Act, as to which there appears little room for doubt, then those instrumentalities actually used in propelling the gas through the main pipe lines into other States, would appear to be such a necessary and indispensable part of the plaintiff's business as to make a tax upon their use a direct burden upon interstate commerce. See also the *Associated Press v. National Labor Relations Board*; *National Labor Relations Board v. Freuhauf Trailer Company*; *Washington-Virginia & Maryland Coach Company v. National Labor Relations Board*;



and, National Labor Relations Board v. Friedman-Harry Marx Clothing Company, Inc., decided at the same sitting.

The writ of injunction should, therefore, be made permanent.

(Sgd.)

RUFUS E. FOSTER,  
Senior U. S. Circuit  
Judge, Fifth Circuit.

BEN C. DAWKINS,  
U. S. District Judge,  
Western District of Louisiana.

WAYNE G. BORAH,  
U. S. District Judge,  
Eastern District of Louisiana.

### EXHIBIT "F".

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF LOUISIANA,  
MONROE DIVISION.

No. 615. In Equity.

ARKANSAS-LOUISIANA PIPE LINE COMPANY, *Complainant,*

*vs.*

MELTON COVERDALE, Sheriff and Tax Collector, *Respondent.*

The above numbered and entitled cause having been tried and submitted upon its merits, and the law and the evidence being in favor of the plaintiff and against the defendant, it is, therefore,

Ordered, Adjudged and Decreed that there be judgment in favor of the plaintiff, Arkansas-Louisiana Pipe Line Company, and against the defendant, Milton Coverdale, Sheriff and Tax Collector, permanently enjoining and prohibiting him from attempting to collect the horsepower tax upon the engines involved in this case, and from otherwise seizing or selling any of the property of the plaintiff in enforcement of said tax.



It is further Ordered, Adjudged and Decreed that the defendant pay all costs.

Done, Read and Signed on this the 22 day of May, A. D., 1937.

(Sgd.)

RUFUS E. FOSTER,  
*Senior U. S. Circuit  
Judge, Fifth Circuit.*

(Sgd.)

BEN C. DAWKINS,  
*U. S. District Judge,  
Western District of Louisiana.*

(Sgd.)

WAYNE G. BORAH,  
*U. S. District Judge,  
Eastern District of Louisiana.*

(1384)

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**FEB 12 1938**

**CHARLES ELMORE CROPLEY**  
CLERK

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1937**

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**No. 458**

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**MILTON COVERDALE, SHERIFF AND EX-OFFICIO  
TAX COLLECTOR,**

**Appellant,**

*versus*

**ARKANSAS-LOUISIANA PIPE LINE COMPANY,  
Appellee.**

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**ORIGINAL BRIEF ON BEHALF  
OF APPELLANT.**

---

- 
- ✓ **GASTON L. PORTERIE,**  
Attorney General of Louisiana;
  - ✓ **J. C. DASPIT,**  
Assistant Attorney General;
  - ✓ **F. A. BLANCHE,**  
Assistant Attorney General;
  - ✓ **E. LELAND RICHARDSON,**  
Assistant Attorney General.
-

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# **SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1937**

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**No. 458**

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**MILTON COVERDALE, SHERIFF AND EX-OFFICIO  
TAX COLLECTOR,**

**Appellant,**

*versus*

**ARKANSAS-LOUISIANA PIPE LINE COMPANY,**  
**Appellee.**

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**ORIGINAL BRIEF ON BEHALF OF APPELLANT.**

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## **OPINIONS BELOW.**

The opinion rendered by a statutory court of three judges is reported in 20 F. Supp., 676. (See also opinions in case of Union Sulphur Company v. Reid, Sheriff, et al., 17 F. Supp., 27, and original opinion on the question of the issuance of a preliminary injunction in case of Arkansas-Louisiana Pipe Line Company v. Coverdale, Sheriff, 17 F. Supp., 34, and on rehearing, 17 F. Supp., 36, including dissenting opinion, 17 F. Supp., 38).

## **APPELLATE JURISDICTION.**

Paragraph I of Rule 12 has been complied with.

## **STATEMENT OF THE CASE.**

Appellee, the Arkansas-Louisiana Pipe Line Company, a foreign corporation doing business in Louisiana, filed suit against the Sheriff and Ex-officio Tax Collector for the Parish of Ouachita, Louisiana, to enjoin said Sheriff and Ex-officio Tax Collector from collecting from appellee the tax levied by Act No. 6 of the Louisiana Legislature for the year 1932, (Copy of Act No. 6 of 1932 appears in the addenda to this brief at page i), alleging that said Statute violated both the Constitution of the United States and the Constitution of Louisiana in many respects, (R. 1). After hearing, the district court of three judges issued a preliminary injunction as prayed for, (R. 14). Appellant applied for a rehearing which was granted, (R. 18, 19).

## **Rehearing—Dissenting Opinion.**

On rehearing, the Court reversed its original ruling and held Act 6 of 1932 violated neither the Constitution of the United States nor the Constitution of Louisiana, (R. 20), but held that the tax involved, insofar as the Arkansas-Louisiana Pipe Line Company, appellee herein, is concerned, is a direct burden on interstate commerce, and issued a preliminary injunction, (R. 20-23). This decision was by a divided court, United States Circuit Judge Joseph C. Hutcheson dissenting from the majority opinion rendered by



United States District Judges Dawkins and Borah, (R. 23). Judge Hutcheson, in a written opinion, (R. 23, 24, 25), held the tax involved was not a direct burden on interstate commerce and that the Arkansas-Louisiana Pipe Line Company was not even entitled to a preliminary injunction (R. 23, 24, 25). He did not sit in the case when it was first heard on the question of the issuance of a preliminary injunction (R. 14, 15, 16, 17).

A district court of three judges, United States Circuit Judge Rufus E. Foster and District Judges Dawkins and Borah, then heard the case on the question of the issuance of the permanent injunction, (R. 124). This three-judge court made the preliminary injunction issued by a divided court, permanent (R. 124-133). From this ruling the Sheriff and Tax Collector has appealed to this Court.

#### **Operations of Appellee in Louisiana.**

The Arkansas-Louisiana Pipe Line Company is engaged in the business in Louisiana of producing and gathering natural gas from its own wells, (R. 77-121, 125). It gathers this gas through a field-gathering system, (R. 77-121), and conveys it to a central point on the edge of the gas fields, (R. 77-121) to its Munce Station, (R. 77-121). Here it is converted from an unmerchantable product into a merchantable product, (R. 77-121, 126). It also buys at its Munce Station, gas which is produced and gathered by others, (R. 77-121-125). This purchased gas is also changed from an unmerchantable into a merchantable product at the Munce Station in the manner shown in the testimony, (R. 77-121, 126).

### **Compressors.**

The Arkansas-Louisiana Pipe Line Company, at its Munce Station, uses ten compressors to produce the gas from the wells, and draw it to its Munce Station, (R. 77-121). The gas, after reaching the Munce Station through the field-gathering lines, and after it is changed into a merchantable product, (R. 77-121, 126), is compressed by said compressors and by this operation is loaded into a twenty-inch high pressure pipe line belonging to appellee herein, and by the use of said twenty-inch main, most of the gas loaded into it is carried to points outside of Louisiana. The terminus of the twenty-inch main pipeline in Louisiana is at the Munce Station.

The ten compressors referred to in the preceding paragraph require mechanical energy to operate them, (R. 77-121).

### **Manufactures, Generates or Produces Mechanical Power or Energy in Louisiana.**

The Arkansas-Louisiana Pipe Line Company has elected to obtain the mechanical power necessary to operate the ten compressors from ten four cylinder 1000 horsepower Cooper Bessemer internal combustion gas engines, (R. 77-121). The mechanical power is produced, generated or manufactured by converting the heat energy in natural gas into mechanical energy. (R. 77-121).

### **Permanent Situs in Louisiana.**

The internal combustion gas engines referred to in the preceding paragraph are bolted down to a concrete foundation at the Munce Station, and have a permanent situs in Louisiana. (R. 77-121).

The mechanical energy, after being generated, manufactured or produced, is transmitted to the compressors by rods (R. 77-121), where it is consumed by the compressors. (R. 77-121).

The appellee also operates two other internal combustion gas engines, (R. 2, 3, 50), with 250 horsepower capacity each, that are bolted down to a concrete base at the Munce Station and are used to convert the heat energy in gas into mechanical energy, (R. 2, 3, 50). The mechanical energy, after being generated, produced or manufactured, is transmitted to an electric generator, which consumes the mechanical energy, and converts it into electrical energy (R. 50, 2, 3, 93). The electrical energy so generated is used to light buildings, operate machine shops and air compressors (R. 3).

#### Act Six of 1932.

Act 6 of 1932, involved herein, levies what is known as the Power Tax of Louisiana. Section 1 of the Statute levies, in addition to other taxes of every kind imposed by law, an excise, license or privilege tax upon every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, which tax is measured by the gross receipts from the sale of electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution or resale.

Section 2 of said Statute levies, in addition to all other taxes, an excise, license, or privilege tax upon every

person, firm, corporation or association of persons engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power, in the State of Louisiana, and the said tax is measured by the gross receipts from the sale of such electricity, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution or resale.

Section 3 of said Statute levies, in addition to all other taxes imposed by law, upon every person, firm, corporation or association of persons, an excise, license or privilege tax for the privilege of generating or manufacturing power not subject to the tax imposed by Sections 1 and 2 of said Act, based upon the horsepower capacity of the machinery or apparatus known as "prime mover" or "prime movers" operated by such person, firm, corporation or association of persons, for the purpose of producing power. Section 3 further provides that any power that is secured from a person, firm, corporation or association of persons, subject to the tax imposed by Sections 1 or 2 of the Act, shall not be liable for the tax imposed by Section 3.

#### **Appellant's Position.**

Appellant contends that the operations of the Arkansas-Louisiana Pipe Line Company described herein where it generates, manufactures or produces mechanical energy or power in Louisiana by converting the heat energy in natural gas into mechanical energy by using ten four cylinder 1000 horsepower internal combustion gas engines, and two 250 horsepower internal combustion gas engines; which engines are technically known as "prime movers", are



intrastate and local operations, and subject it to the tax levied by Section 3 of Act 6 of 1932, for the privilege of producing, manufacturing or generating this mechanical energy or power, irrespective of the fact that the mechanical power or energy from ten of the prime movers is transmitted or used by ten compressors that are used by appellee to produce gas and load it into a twenty-inch main pipeline through which part of the gas is carried to other states and the mechanical energy from the two 250 horsepower engines is used to operate electric generators which generate electrical energy used by appellee to operate lights for its building, to operate air compressors and its machine shop. In other words, appellant contends there is a difference between the manufacturing, generation or production of energy or power, and its ultimate transmission and use, and that the tax on the person for the privilege of manufacturing, generating or producing mechanical power or energy by means of internal combustion gas engines, bolted down to concrete, therefore, having a permanent situs in Louisiana, is not a direct burden on the interstate commerce carried on by appellee, that is, transporting gas out of the State of Louisiana into other states.

, The tax levied by Section 3 of Act 6 of 1932, is measured by the rated horsepower capacity of the internal combustion gas engines used by appellee to generate, manufacture or produce mechanical energy or power. The amount of tax, therefore, is constant, and is neither increased or decreased by the amount of gas transported by appellee across state lines. It is an excise, license or privilege tax on the person for the privilege of manufacturing, producing or generating mechanical power or energy, and is not on the use of the energy or power.

## SUMMARY OF APPELLANT'S TESTIMONY.

**A. B. Singletary, Jr. (R. pp. 77-89, 93-98):**

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1932, majoring in engineering. I am thoroughly familiar with the make-up and operation of internal combustion engines, including internal combustion gas engines, technically known as prime movers. I am also familiar with all phases of operation and construction of compressor units, used in compressing gas, and am also familiar with the various methods of transmitting mechanical energy after it has been manufactured.

I have on two occasions visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipeline Company located at Sterlington, Louisiana, and have carefully examined all the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, and other equipment referred to herein.

The document introduced in evidence by appellant, marked "Exhibit A" for the purpose of identification (R. p. 91), is a photograph showing the same type of equipment used by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station". On said photograph (R. p. 91), are shown three separate and distinct units. Marked by Roman Numeral III is the internal combustion gas engine unit; marked by Roman Numeral I is the compressor unit; and marked by Roman Numeral II is the power transmission unit. All of these units are identical

with the units owned and operated by the Arkansas-Louisiana Pipeline Company at its "Munce Compressor Station", with the exception that the said units at the "Munce Compressor Station" are larger, that is, the internal combustion gas engine units are larger, the compressor units are larger, and, of course, the power transmission units are larger to take care of the increased mechanical power which is generated and manufactured by the internal combustion gas engine units and which is transmitted through the power transmission units to the compressor units which use or consume said mechanical power.

On said photograph (R. p. 91), marked "Exhibit A" for the purpose of identification, I have detailed the lettering and legend of the principal parts that make up the internal combustion gas engine unit, the parts making up the power transmission unit and the parts making up the compressor unit. Each of these units is separate and distinct insofar as its duties and functions are concerned.

The internal combustion gas engine unit marked by Roman Numeral III, on said photograph (R. p. 91), is a unit separate and distinct in itself and complete in itself. It is bolted down to a concrete foundation at the "Munce Compressor Station" and has a permanent situs at said station, in the Parish of Ouachita, State of Louisiana.

This internal combustion gas engine unit is known as a "prime mover" and is used in generating and manufacturing mechanical power. By the use of said internal combustion gas engine unit, heat energy, which is contained in the natural gas used as fuel, is changed into mechanical energy. This changing of heat energy of natural gas into

mechanical energy is a manufacturing process and takes place in the following manner:

As the engine piston marked M, on said photograph, marked "Exhibit A" for the purpose of identification, moves from the position marked L to the position marked L', in the engine cylinder, a charge of natural gas and air is drawn into the engine cylinder through the gas intake valve marked O. On the return of the engine piston to the position marked L, this charge of gas and air is compressed, and just before reaching the point marked L, is ignited by an electric spark. The subsequent burning of this charge of gas and air in the engine cylinder forces the engine piston marked M back to the position marked L'; this is the stroke of the piston wherein the heat energy contained in the natural gas is converted into mechanical energy and this mechanical energy which has been imparted to the piston is transmitted by the piston rod marked K to the point of power take-off marked G. On the next stroke of the engine piston from the point marked L' to the point marked L, the burned gases, resulting from the burning of the charge of gas and air, are expelled from the engine cylinder through the exhaust valve marked N. From this point a similar cycle of operations occurs on the opposite side of the piston marked M. In the engine cylinder, marked I, two similar cycles of operations occurs as above described for the engine cylinder marked I', each power stroke of the piston in each cylinder imparting mechanical power to the piston rod marked K, henceforth to the point of power take-off marked G. The function of the large fly-wheel marked F is simply to smooth the power impulses imparted by the piston, thereby giving an even or steady motion to the entire internal combustion gas engine unit.



The mechanical energy generated and manufactured by the internal combustion gas engine unit is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

The operation of the above described internal combustion gas engine unit, which generates and manufactures mechanical energy, is entirely independent and separate from the operation of the transmission unit shown in said photograph (R. p. 91), and marked by Roman Numeral II, and is also entirely independent and separate from the operation of the compressor unit shown in said photograph (R. p. 91), and marked by Roman Numeral I.

Marked by Roman Numeral II, on said photograph (R. p. 91), is shown the power transmission unit. The function of this unit is to transmit the mechanical power, generated and manufactured by the internal combustion gas engine unit, from the point of power take-off, marked G on said photograph, to the compressor unit marked Roman Numeral I, which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit.

Mechanical power, such as is manufactured by the above described internal combustion gas engine unit, could be transmitted to the compressor unit which uses it by any of the common means of power transmission, such as, belting, chains, shafting, etc.

Marked by Roman Numeral I, on said photograph marked "Exhibit A" for purpose of identification (R. p. 91),

is shown the compressor unit, which unit uses the mechanical energy or power generated and manufactured by the internal combustion gas engine unit after said mechanical energy or power has been transmitted to it by the above described power transmission unit. This compressor unit performs a dual purpose. It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells, compresses it and changes the condition of the gas from one pressure to a higher pressure thereby allowing the gas to be delivered into the main pipeline of the Arkansas-Louisiana Pipeline Company as withdrawals are made at the opposite end of the line. This suction and compression of gas takes place in the compressor unit in the following manner:

The mechanical energy obtained from the internal combustion gas engine unit, through the power transmission unit, is in the form of a forward and backward motion. This forward and backward motion causes the compressor piston marked C in the photograph (R. p. 91), to move from the position marked B to the position marked B' in the compressor cylinder. When the compressor piston marked C moves from the position marked B to the position marked B', a suction is created in that part of the compressor cylinder marked B which suction draws the gas from the feeder lines of the field gathering system into the compressor cylinder. The return of the compressor piston from the point marked B' to the point marked B compresses this gas in the compressor cylinder to a higher pressure and said gas is delivered through the gas outlet marked D into a pipe leading to the cooling system at the "Munce Compressor Station". A similar cycle

of suction and compression occurs on the opposite side of the compressor piston in the compressor cylinder marked B'.

Mechanical power or energy is necessary to the operation of any compressor unit.

There are three common methods of manufacturing mechanical power or energy which is necessary to operate compressor units. First, the method used at the "Munce Compressor Station", whereby an internal combustion gas engine unit is used to convert heat energy of natural gas into mechanical power or energy; second, the use of an electric motor which converts or manufactures electrical energy into mechanical energy; third, the use of a steam engine which converts or manufactures heat energy of steam into mechanical energy. In each case a new and distinct form of energy results from a manufacturing process; that is, changing one type of energy into mechanical energy and in each case this new product is capable of transmission and use in industry.

With the equipment appearing in said photograph (R. p. 91), the Arkansas-Louisiana Pipeline Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy contained in the natural gas used as fuel, into mechanical energy, which is manufacturing. This manufacturing process is intrastate in character and is comparable and similar in every detail in this respect to other plants in Louisiana manufacturing power, such as electric power plants, etc. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting

said mechanical energy, after said mechanical energy has been produced or manufactured. Third, by the use of the compressor unit, marked Roman Numeral I, it is using mechanical energy after it has been manufactured and transmitted.

The word "power", as used by engineers, indicates energy under human control and available for doing work. The principal sources of power are the muscular energy of men and animal; the kinetic energy of the winds and streams; the potential energy of waters at high levels, of the tides and waves, the heat of the earth and sun; and heat energy derived from the combustion of fuels. The change of one form of energy into another form of energy through the medium of an engine, or other type of prime mover, is manufacturing. The heat energy contained in fuels is one form of energy and the mechanical energy resulting from the combustion of fuels in an internal combustion engine is another form of energy having entirely different properties from the heat energy of fuels. This mechanical energy resulting from the combustion of fuels in an internal combustion engine is capable of measurement by the use of formulas recognized by engineers and the unit of measurement is called horsepower. The horsepower of internal combustion gas engine units, such as involved in the present suit, and used by the Arkansas-Louisiana Pipeline Company, at its "Munce Compressor Station", is measured in the following manner:

The internal combustion gas engine unit is first run under no-load, that is, only a quantity of natural gas and air is admitted to the engine cylinder necessary to run



the engine at its normal speed without any connected load. At this condition of no-load, an indicator card is taken at each combustion chamber of the engine from which the mean effective pressure for each combustion chamber is computed, and from this an average mean effective pressure is computed for all combustion chambers. Having the effective area of the engine piston in square inches, the length of stroke of the engine piston in feet and the number of revolutions per minute, the indicated horsepower of the engine at no-load is computed by substituting the above values in the formula:

$$\text{I.H.P.} = \frac{A \times P \times S \times N}{33,000} \times C$$

Where: I.H.P. = Indicated horsepower

A = Effective area of the engine piston in square inches

P = Average mean effective pressure in pounds per square inch

S = Length of stroke of piston in feet

N = Number of power strokes per minute

C = Number of combustion chambers

The engine is next run under full load; that is, all the load the engine will stand without the speed of the engine falling off below a certain point. The same procedure, as above described, is then followed and the indicated horsepower again computed. The actual brake horsepower of the engine is then the difference between the horsepower computed for full-load and for no-load. Before any internal combustion engine is sold, tests are run by the manufacturer to determine what the maximum brake horsepower of said engine is at normal speed and the manufacturer

owned by other companies, which gather gas from wells owned by such other companies and delivered to said central point, is metered at said central point for the purpose of determining the amount of money due said companies by the Arkansas-Louisiana Pipeline Company for the gas purchased. This gas purchased from other companies, at the central point marked "Munce Metering Station" on said map, after it is gathered from the wells in said system of feeder or gathering lines, is supposed to be merchantable gas, that is, it should contain no water or gasoline in either liquid or vaporous state, but this gas does contain this water and natural gasoline, and in such condition is not merchantable. At the point marked "Separator", on said map (R. p. 92), prior to the passage of the gas through the meters at the point marked "Munce Metering Station", on said map, are found separators, used for the purpose of removing this water and natural gasoline. Only one of these separators is shown on said map and marked "Separator". However, at the time I visited the plant, called the "Munce Compressor Station", I was shown such a separator installed in each field-gathering line leading to the metering station, by the Superintendent in charge of the Munce Compressor Station. These separators were installed some fifteen or twenty feet from the meters, marked "Munce Metering Station" on said map (R. p. 92). These separators are so constructed so as to retard the velocity of flow of the gas, and consist of a large steel vessel, in some cases, equipped with "Baffles". The gas enters the vessel about half-way up from the bottom and leaves at the top, and because of the large size of the vessel, as compared to the line in which the gas enters, the velocity of flow of the gas is greatly diminished, and it is this

diminution in the velocity of the flow of the gas, which causes the water and natural gasoline vapor contained in the gas, to settle to the bottom of the vessel or separator, where it can be blown out when a sufficient quantity has accumulated. This is the first step taken at the "Munce Compressor Station" to change the unmerchantable gas to merchantable gas.

The gas, after passing through the metering station, shown on said map (R. p. 92), enters the three large lines, shown on said map as "Lines Connecting Metering Station With Headers", and from these lines the gas goes into two lines marked "Headers" on said map. The gas, in entering the "Headers" again has its velocity of flow retarded, and more water and natural gasoline settles to the bottom of the Headers, where it can be blown out. This is the second step taken by the appellee at the "Munce Compressor Station" to change the gas from an unmerchantable product to a merchantable product. After leaving the "Headers", the gas reaches the compressor units, shown on said map (R. p. 92), as the "Munce Compressor Station". The action of the compressor units in compressing the gas raises its temperature from about 78 Degrees to 225 Degrees F. The hot gas, upon leaving the compressor units, flows to the unit marked, "Coolers" on said map, where the temperature of the gas is reduced from 225 Degrees to about 80 Degrees F. It is necessary that the temperature of this gas be reduced for the following reasons:

1. To reduce the velocity of the gas, thereby making it possible to load a larger volume of gas into the 20-inch interstate line. (Charles Law states that with constant pressure, the volume of a gas varies with its absolute temperature).

2. The preventing of the hot gasses from corroding the pipe line.

3. To prevent the hot gases from melting the insulation on the outside of the pipeline.

4. By cooling the gas to prevent expanding and contracting of the main pipe line, thereby eliminating danger of the line breaking or causing leaks.

5. To further condense and remove the water vapor and natural gasoline contained in the gas, which is another step in an effort to make the gas merchantable.

After leaving the Coolers, the gas then passes through a Scrubber located just ahead of the unit marked "Check Meter" on said map (R. p. 92), which Scrubber removes the remaining water and natural gasoline from the gas. The installation of this Scrubber was found necessary because the other processes named herein were not removing all of the water and natural gasoline from the gas. The gas then passes through the unit marked, "Check Meter" on said map (R. p. 92), where the quantity to be loaded into the main pipe line is measured. After being measured in the Check Meter, the gas is then loaded into the main 20-inch pipeline, marked "Main 20-Inch pipeline" on said map (R. p. 92).

Thus, we find a very intricate system of field-gathering lines, metering stations, Separators, Headers, Cooling Towers, Check Meters and Scrubbers, through which the gas handled by the Arkansas-Louisiana Pipeline Company must pass before it is finally loaded into the main 20-inch interstate line by the compressor units for transportation into Texas and Arkansas (R. p. 92).



The term "Munce Compressor Station" which is used by the Arkansas-Louisiana Pipeline Company to refer to its properties at Sterlington, Louisiana, and which term I naturally used herein, is a "misnomer" because at this plant are done more things than the mere compressing of natural gas. First, by the action of these compressor units, gas wells, which would normally not be able to produce the quantity of gas allotted each well by the Louisiana Department of Conservation, are made to produce their maximum allotment. Second, gas which would otherwise be unmerchantable is made merchantable by the use of compressor units coupled with separators, cooling system and scrubbers. Third, by the use of internal combustion gas engine units, the Arkansas-Louisiana Pipeline Company is manufacturing mechanical power or energy, a product having a distinct commercial value. And fourth, by the use of transmission units, mechanical power or energy is transmitted to its place of consumption.

I am familiar with the operation of the Ten (10) four cylinder Cooper Bessemer Internal Combustion engines owned and operated by the Arkansas-Louisiana Pipeline Company, appellee herein, at its Munce Station (R. p. 2), referred to in this litigation, and I am also familiar with the operation of the two (2) electric generators propelled by gas burning Internal Combustion engines used to furnish electrical energy for lighting the buildings at the said Munce Station (R. p. 2), and that none of said equipment and machinery is stand-by equipment; that all of said equipment is operated approximately the same number of hours per year, and none of it is owned and operated as stand-by equipment, by appellee; that none of said equipment is used only in case of emergency; that all of

then gives a brake horsepower rating to said engine not to exceed the brake horsepower the engine is proven capable of manufacturing or producing.

The brake horsepower of internal combustion gas engine units, such as used by the Arkansas-Louisiana Pipeline Company, is determined solely by reference to the internal combustion gas engine unit. The power transmission unit and the compressor unit have nothing whatever to do with the determination of said brake horsepower. In other words, the brake horsepower rating of the internal combustion gas engine units is the amount of power that is generated or manufactured by changing the heat energy of the fuel, natural gas, into mechanical energy.

Prior to the discovery of electricity, the principal uses of mechanical power, manufactured by internal combustion engines, were for driving shafting, pumps, compressors, hoists, and the like. Since the discovery of electricity, it has often been found more economical to manufacture mechanical energy at one place and then convert this mechanical energy into electrical energy. The electrical energy is then transmitted over wires to the place mechanical power or energy is needed. In such a case, some form of natural energy, such as the heat energy of fuels or the potential energy of water at high levels is, by the use of a prime mover, converted or manufactured into mechanical energy and the mechanical energy converted or manufactured by the use of electric generators into electrical energy and the electrical energy transmitted over wires to the point where the mechanical energy is needed. The electrical energy is then converted into mechanical energy by the use of electric motors.

There are many instances, however, in present day engineering where mechanical energy is transmitted long distances through rods. In such cases, through the medium of internal combustion engines, usually gas or gasoline engines, heat energy is manufactured into mechanical energy. This mechanical energy is transmitted through rods for long distances where it is finally used to operate pumps, compressors, and other mechanical units that require mechanical energy for operation. A good example of this is in the oil fields in Caddo Parish, Louisiana. In said fields, where oil companies own numerous wells which require pumping, and which wells do not flow of their own accord, the company will, at some central location, establish an internal combustion gas engine unit operating on the same principle as the internal combustion gas engine units owned and operated by the Arkansas-Louisiana Pipeline Company at the "Munce Compressor Station". Through the medium of this internal combustion engine unit, heat energy is converted into mechanical energy. The mechanical energy, manufactured by the engine, is then transmitted, from the point of power take-off of the engine, first from the engine to a large wheel and from said large wheel to several long rods which are connected to pumping units at the oil wells. These pumping units are often located as far as one-half mile from the engine manufacturing the mechanical power. Many wells can thus be pumped by the mechanical power manufactured by one internal combustion engine.

The point I am making is that the method of operation at the "Munce Compressor Station" is similar to the operation in the Caddo field, above referred to. While the mechanical energy or power is not transmitted in exactly the same manner, the medium of transmission in each case

is rods and the principle involved is identical. In other words, the internal combustion gas engine unit, technically known as the prime mover, which is permanently fixed to concrete at the "Munce Compressor Station", manufactures and generates mechanical power by changing heat energy into mechanical energy. Said mechanical energy or power is, through the medium of rods, transmitted or carried to the compressor unit, and operates said compressor unit. The compressor unit could be at a point a far distance from the internal combustion gas engine unit, and under such condition the transmission rods would necessarily have to be of sufficient length to reach the compressor, or the same power, or mechanical energy, could be used to operate several compressor units, or a pump, or any other machinery requiring mechanical power or energy.

If the internal combustion gas engine unit, known as the prime mover, was situated in Louisiana, and bolted down to concrete in Louisiana, say for example, at the "Munce Compressor Station", and the compressor unit was situated in the State of Mississippi or Alabama, and through a medium of rods, the mechanical energy and power generated and manufactured by the internal combustion gas engine unit, was transmitted and conveyed to said compressors located in Mississippi or Alabama, the transmission of said mechanical energy or power through the rods would be across the State lines and would be interstate commerce. The generation or manufacturing of the mechanical energy or power, however, would be local in character. In other words, the same situation would exist, in principle, as if the internal combustion gas engine units were connected to electric generators, which generated elec-



trical energy and said electrical energy was transmitted through a system of wires to the States of Mississippi or Alabama and used by an electric motor to operate a compressor.

The mechanical energy or power generated and manufactured by the internal combustion gas engine units at the "Munce Compressor Station" could very readily and very easily be used to operate an electric generator instead of a compressor, by merely attaching a generator where it could utilize the mechanical energy or power rather than the compressor. Then, the situation would be that heat energy is manufactured into another product, namely, mechanical energy or power, and this product would, in turn, be manufactured into electrical energy.

The manufacture and generation of mechanical power is one thing, and the consumption or use of that power is another, and the transmission of that mechanical energy or power to the point of consumption is a thing distinct from its manufacture or generation and its consumption. In other words, at the "Munce Compressor Station" there is, first, the manufacture or generation of mechanical power. The next step is its transmission, and the next step is its consumption or use. These three steps are entirely separate and distinct, and have no connection other than, before the mechanical energy or power is transmitted, it must be manufactured or generated, and before it can be consumed or used, it must be manufactured or generated, and transmitted from its place of manufacture or generation to the place where it is to be utilized.

The document introduced by appellant, and marked Exhibit "B", for the purpose of identification (R. p. 92),

is a copy of a map furnished me by the Arkansas-Louisiana Pipeline Company. Said map shows the field-gathering lines which connect with the gas wells owned by the Arkansas-Louisiana Pipeline Company, which are used for the purpose of gathering the gas from the place of severance from the ground, and collecting it and carrying it to the site of the "Munce Compressor Station". Also, shown on said map (R. p. 92), in symbols, are the Munce Compressor Station, the Separators, the Cooler, Check Meter and other equipment referred to herein, as well as the terminus of the 20-inch main pipeline into which the gas is loaded and is started on its interstate journey to Texas and Arkansas.

Shown on said map (R. p. 92), are the field-gathering lines in the Monroe and Richland Gas Fields, connected to wells owned by the Arkansas-Louisiana Pipeline Company. This system of gathering lines is made up of small lines leading out to the various wells owned by said appellee, and is the means by which the gas is gathered up and carried to the edge of the producing properties, where it is treated, measured, compressed, and loaded into the interstate carrier, as described elsewhere in this testimony.

As explained in the testimony of W. H. Buckley (R. p. 74), offered by appellee herein, the operation of the compressor units at the Munce Compressor Station are necessary from the viewpoint of the production of the gas from wells, and the utilization of the allowable production of such wells, as fixed by the Louisiana Department of Conservation, for the following reasons (R. p. 74): .

Some of the wells delivering gas into the field-gathering lines have lower pressure than others, and were

all of the wells allowed to flow under their own pressure into the field-gathering lines, the low pressure wells would not be able to produce, and by use of the compressor units, which draws the gas out of the field-gathering lines, the pressure in the field-gathering lines is lowered to such an extent that all of the wells can be regulated to produce their allowable production, as fixed by the Louisiana Department of Conservation.

At the points marked "Terminus of other Field Gathering Lines", on said map (R. p. 92), are connected similar field-gathering lines which deliver gas purchased by the Arkansas-Louisiana Pipeline Company from owners of other wells. These other field-gathering lines, although not shown on said map, perform the same function as the lines of the Arkansas-Louisiana Pipeline Company, that is, they gather the gas from the various oil wells and deliver the gas to a central point on the edge of the gas producing properties, where it is treated, metered, compressed, cooled, check metered and loaded into the interstate carrier.

After the gas has been gathered by the field-gathering lines and delivered to the central point on the edge of the producing properties, which is called the Munce Compressor Station, it then passes through the metering stations at said central point, and is metered. The gas belonging to appellee, produced from appellee's wells, and gathered into appellee's field-gathering system, and brought to said central point, known as the "Munce Compressor Station", is metered at said central point in order that appellee might know the amount of gas that is delivered into the interstate main at the central point, produced by appellee's wells. The other field-gathering systems,

said equipment is used in manufacturing mechanical power and is used approximately the same number of hours per year, as is shown by the testimony of appellee's witnesses.

I am in direct charge of the administration of the provisions of Act 6 of 1932, as amended, and Act 25 of the Second Extra Session of 1935, as amended by Act 5 of the Fourth Extra Session of 1935. It has been the universal policy in administering said Statute to allow exemptions from the tax on the ground that the equipment is stand-by equipment only in such cases where the equipment is maintained and used solely and only in the case of failure of the equipment ordinarily used to manufacture power.

The internal combustion gas engine unit, the transmission unit, and the compressor unit, as shown in said Exhibit "A" (R. p. 91), are the same in principle, and are in every respect similar to the internal combustion gas engine units, transmission units, and compressor units, located at the Munce Compressor Station, involved herein, with the exception that the internal combustion gas engine units, transmission units, and the compressor units at the Munce Station are larger, and the horse power rating or horse power capacity of the internal combustion gas engine units at the Munce Station is greater than the horse power capacity of the internal combustion gas engine unit shown in Exhibit "A". The transmission of mechanical energy is identical at the said Munce Station with the Exhibit shown in Exhibit "A", and the compressor units are identical at the Munce Station with the compressor unit shown in Exhibit "A", with the exceptions herein above referred to, that is, all three separate and distinct units are larger at



the Munce Station than the three separate and distinct units shown in said Exhibit "A".

T. W. Johnson, witness for appellee, makes the following statement (R. pp. 41-42):

"- - - that the compressors described and employed at the Munce Compressor Station form an integral part of the pipe line through which natural gas is transported, and the engines used in connection with such compressors are used solely and only to facilitate the movement of natural gas through the pipe lines."

The compressor unit, marked unit No. "1" on Exhibit "A" (R. p. 91), is not an integral part of the pipe line, and is used not only to compress the gas and load it into appellee's twenty-inch main at the Munce Station, but is used for other purposes as set out elsewhere in my testimony. The internal combustion gas engine unit, marked internal combustion gas engine unit No. "3" on Exhibit "A" (R. p. 91), is used solely and only for the purpose of manufacturing mechanical energy by converting heat energy contained in natural gas into mechanical energy, which mechanical energy, in turn, is transmitted to the point of use through the medium of transmission rods, marked transmission unit on Exhibit "A", (R. p. 91), to the compressor unit, the point of consumption of the mechanical energy.

The said Johnson further states that (R. p. 42):

"Because of the physical design, assembly and type of equipment employed, the energy created by the operation of the engines in use is not susceptible of transmission over any considerable distance and can

be used only for the purposes intended or the transmission of the natural gas transported, through the lines of which the compressors form an integral part and the energy created for these reasons cannot be considered to have any commercial value independently of the operation described."

The mechanical energy, after it has been manufactured, is capable of transmission for great distances, and in many cases, is so transmitted (R. pp. 110-114).

Mechanical energy is a distinct article of commerce, capable of measurement and sale, and is, at times, measured and sold; the mechanical energy manufactured by the internal combustion gas engine units at the said Munce Station has a commercial value independent of the operation of the compressor units which use said power, just as would the manufacture of electrical energy; in each case, transmission being required to transmit the energy, whether it be mechanical or electrical, to the point of use or consumption.

The said Johnson further states (R. p. 42):

"In the operation of compressor units such as those described, no power is generated in the compressor unit except that required to overcome frictional resistance in the unit itself until gas is admitted to the compressor cylinder."

The statement of said Johnson, quoted above, is incorrect. No power is generated in the compressor unit. The compressor unit consumes the mechanical power manufactured by the internal combustion gas engine unit and transmitted to it by said transmission unit. It is elemen-

tary that the compressor units do not generate power, but on the contrary, consume power.

H. T. Goss, witness for appellee, in his testimony, stated (R. p. 44):

"Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines."

For the reason set forth elsewhere in my testimony, the statement of the said H. T. Goss quoted above is erroneous. Mechanically speaking, three separate and distinct units make up the equipment as shown in Exhibit "A" (R. p. 91), and these three separate and distinct units do not constitute an integral unit; that the mechanical energy manufactured by the Internal Combustion Gas Engines at the Munce Station can be used to operate any unit requiring mechanical power. It so happens that at the Munce Station, the mechanical power is used to operate compressors.

The said H. T. Goss further said (R. p. 44):

"The energy created due to the physical design, assembly and types of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder."

This statement by said Goss is not accurate for the reasons set forth elsewhere in my testimony. Mechanical energy is susceptible of transmission over considerable distances, and is frequently transmitted over considerable distances as is shown by the testimony and evidence in this case (R. pp. 110-114).

The said H. T. Goss further stated (R. p. 45):

"The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome frictional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe lines, which movement to the required degree would be impossible without such power."

Said statement is inaccurate and is not sound from an engineering standpoint. No power whatever is generated in compressor units, marked such, in said Exhibit "A" (R. p. 91). Power is consumed by the compressor units.

**G. F. Matthes** (R. pp. 98-103):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the School of Engineering of Tufts College in 1922, majoring in mechanical engineering. I have also taken work and pursued studies



in engineering at the Massachusetts Institute of Technology. Since 1922, I have been engaged in engineering work, which work has included the design, construction and operation of mechanical plants and power equipment. Also, during the past four years, I have held the position of Assistant Professor in the College of Engineering at the Louisiana State University.

I have examined the testimony in this cause by A. B. Singletary, Jr. (R. pp. 77-89, 93-98), pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Sterlington, Louisiana. I have also carefully examined and studied the photograph introduced in evidence by appellant and marked "Exhibit A" (R. p. 91), for the purpose of identification, which photograph shows equipment similar to that located at the said Munce Station.

The detailed analysis made of the equipment shown in said photograph marked "Exhibit A" (R. p. 91), is correct.

Mechanically, the equipment shown in said photograph marked "Exhibit A" (R. p. 91), for the purpose of identification, is composed and made up of three separate and distinct units, each of said units performing a separate and distinct purpose, and being entirely separate and distinct from each other insofar as duties and functions are concerned. These three separate and distinct units making up the equipment shown in said photograph marked "Exhibit A" (R. p. 91), for the purpose of identification are, first, as shown by Roman Numeral I on said Exhibit, the compressor unit. The second separate, distinct and in-

dividual unit, is marked by Roman Numeral II, and is known as the transmission unit. The third separate and distinct unit is marked on said Exhibit by Roman Numeral III, and is the internal combustion gas engine unit.

The compressor unit, marked Roman Numeral I on said Exhibit, performs a dual purpose. It draws gas from the nearby wells through a system of feeder lines in the gas fields, and after drawing the gas from the wells through said system of feeder lines, compresses it and changes the condition of the gas from one pressure to a higher pressure, building up the pressure so that the gas may be delivered into the main pipe line, and, after having been built up in pressure, moves into the pipe line when withdrawals are made at the opposite end of the line.

The second separate and distinct unit, marked by Roman Numeral II on said "Exhibit A", is the power transmission unit. This unit simply connects the unit marked Roman Numeral III on said Exhibit, which unit manufactures and generates mechanical power, with unit marked Roman Numeral I, the compressor unit, which unit uses the mechanical power. It is through the medium of the transmission rods that the mechanical power, after being manufactured by the internal combustion gas engine unit marked Roman Numeral III on said Exhibit, is transmitted to the compressor unit, marked Roman Numeral I on said Exhibit. The said internal combustion gas engine unit transforms heat energy into mechanical energy, which is a manufacturing process. The mechanical energy thus manufactured by the internal combustion gas engine is a new commercial product.

In the equipment appearing in said photograph (R. p. 91), this product that is manufactured by the internal combustion gas engine unit is carried or transmitted through the medium of the rods and is consumed or used by said compressor unit. Mechanical power or energy is necessary to the operation of said compressor unit.

The three most common methods of manufacturing mechanical energy to operate compressor units are, first, the method used at the Munce Station, namely, manufacturing and generating mechanical energy by the changing of heat energy into mechanical energy by the use of internal combustion gas engine units. The second most common method is by the use of electricity, whereby electrical energy is changed or manufactured into mechanical energy by means of an electric motor. The third most common method is by the use of steam whereby the heat energy of steam is changed or manufactured into mechanical energy by means of a steam engine.

By the use of any of the methods of generating and manufacturing mechanical energy, a new and distinct form of energy results in each case from a manufacturing process; that is, changing one type of energy into another, and in each case a new commercial product is produced or manufactured, which is capable of transmission and use in industry.

With the equipment appearing in said photograph (R. p. 91), the Arkansas-Louisiana Pipe Line Company is doing three things; first, by the use of the internal combustion gas engine unit, marked Roman Numeral III, it is changing heat energy furnished by the natural gas used

as fuel, into mechanical energy, which is manufacturing. Second, by the use of the transmission unit, marked Roman Numeral II, it is transmitting said mechanical energy, after said mechanical energy has been produced or manufactured. The third accomplishment is the use of that mechanical energy after it has been manufactured and transmitted.

While said photograph (R. p. 91), shows the three separate and distinct units, namely, the manufacturing unit, the compressor unit, and the transmission unit, in close proximity, still the principles, mechanically, scientifically, and practically speaking, are identical, and are the same, as would be involved if the internal combustion gas engine unit was at some distance from the compressor unit which uses the energy. If the compressor unit and the internal combustion gas engine unit were, say, for example, a half mile apart, each respective unit would function in the same manner as it does when they are situated in close proximity. In both cases, whether the manufacturing unit and the unit which uses the power are in close proximity or at distant points, they are connected by the transmission unit. The only difference in the equipment would be the length of the transmission rods, it being necessary, of course, that the transmission rods be of sufficient length to connect the manufacturing unit and the unit which uses the power, whether the units be in close proximity or at distant points.

The equipment shown in said photograph (R. p. 91), is permanently affixed to a concrete foundation, and has a permanent situs at the Munce Station. All three units shown in said photograph, that is, the power manu-



facturing unit, the compressor unit, and the transmission unit, are affixed to the same concrete foundation, and are in close proximity, for the reason that this arrangement is much more convenient from the standpoint of manufacturing mechanical power, its transmission and use, than to have the units marked Roman Numerals I and III widely separated and connected by a long transmission unit, such as is commonly found in oil fields where one internal combustion gas engine unit manufactures mechanical power which is used to pump numerous wells, in which case the mechanical power manufactured by the internal combustion gas engine unit is transmitted great distances through the medium of transmission rods. (See R. pgs. 110-114).

Mechanical power, such as is manufactured by the internal combustion gas engine unit shown in said photograph could be transmitted to the compressor unit which uses it by belting, chains, shafting, ropes, etc.

I have read the decision rendered by the Supreme Court of the United States in the case of the *Utah Power & Light Company v. Pfof*, 52 S. Ct. 548, 286 U. S. 165, and have carefully studied the facts involved in that litigation. The generation and manufacture of electrical energy by harnessing the waterfall in Utah and compelling it to operate the turbines, thereby changing potential energy into mechanical energy, and the mechanical energy into electrical energy by the use of generators, and the transmission of the electrical energy over transmission lines into other states, involves the necessity of building up sufficient voltage at the point of manufacture to cause the electrical energy to flow of its own ac-

cord over the transmission lines. Scientifically speaking, it is a fact that unless the generators operated by the turbines at the falls in the Utah case, assisted by transformers build up a sufficiently high voltage, the electrical energy would not of its own accord flow over the transmission lines for any distance in sufficient quantity to make it commercially profitable. Similarly, it is necessary that the pressure of gas be built up before the gas can be delivered into the main high pressure pipeline. It is the pressure thus created that causes the gas to move in the main pipeline of its own accord.

The term "voltage" as applied to electrical energy, is that property of the electrical energy that is comparable to pressure of gas or water that causes the gas or water to move of its own accord. Amperes, as applied to electrical energy, is the volume. In the *Pfost* case, the generators operated by the turbines had to be designed and properly adjusted so that at the time the mechanical energy was manufactured into the electrical energy, the voltage of the newly manufactured product, namely, electrical energy, had to be sufficiently high to cause the flow of the electrical energy over the transmission lines.

Electrical energy in sufficient quantities to supply the commercial demand in the states served by the plant in Utah could be manufactured by the generators, but if the generators and transmission equipment were not so designed and properly adjusted whereby the voltage of the electrical energy was sufficiently high to cause the flow of the electrical energy over the transmission lines, the volume of electrical energy would be available at the plant in Utah, but would not flow over the transmission lines.

In other words, injecting into the electrical energy so manufactured, at the time it is generated or manufactured, the ingredient which causes it to flow over the transmission lines is made a part of the manufactured or generated product, and is comparable to the compression of gas.

The thing that causes gas to move through the main pipe line of the Arkansas-Louisiana Pipe Line Company from its Munce Plant at Sterlington to points in Texas and Arkansas, is the pressure built up in the line by the use of the compressor units which compress the gas and load it into said line. The thing that causes electrical energy to flow over transmission lines, as involved in the *Pfost* case, is the injection into the electrical energy, at the time of its generation, sufficiently high voltage to cause it to flow over the transmission lines into the other states.

**F. J. Mechlin** (R. pp. 103-105):

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Allegheny College, Meadville, Pa., in 1914 with a degree of Bachelor of Science. I also hold a Master of Science degree from Louisiana State University. My experience with internal combustion engines covers a period of thirty years. My first work in this line was between the years 1904 and 1908 as an employee of the Bessemer Gas Engine Company, with main offices and shops located at Grove City, Pa. The Bessemer Gas Engine Company was engaged in the development, manufacture and sale of gas engines, gas compressors, pumping powers and Deisel engines. This is the same concern now merged to form the Cooper-Bessemer Company

that manufactured the internal combustion engines, transmission units, and compressors used by appellee at their plant commonly called the "Munce Compressor Station". My work as an apprentice machinist covered a period of two years and gave an excellent opportunity to personally know the construction and testing conditions for various products manufactured by the company. During the period mentioned, I worked under Messrs. Montgomery and Bartholomew, Shop Foremen, and Mr. John McCune, Plant Superintendent.

During the latter part of my employment term I operated a lathe on which I machined brass castings and rough steel blanks and finished these into a complete valve unit which was then installed in the "direct driven" gas compressor then being commercially developed by the Bessemer Gas Engine Company. After sets of compressor valves were finished by me they were turned over personally to Mr. McDougall, Chief Tester for the company, and under his immediate supervision they were placed into position and test runs made on the compressors. I had an opportunity to observe the behavior of a number of compressors of this type as they were manufactured and tested before shipment to customers.

Prior to the development of the "direct driven" unit shown in Exhibit A (R. p. 91), it was customary to transmit power from a Bessemer gas engine (prime mover) to a gas compressor by means of belting. These belts were nothing more or less than devices used to transmit power from the "prime mover" to the power consuming unit. The length of the belt and consequently the distance from the



"prime mover" to the power consuming unit could and did vary within rather wide limits.

Mr. H. A. Murray, then Chief Designing Engineer of the Bessemer Gas Engine Company, claimed that the "direct driven" engine compressor unit (the forerunner of the type shown in Exhibit A (R. p. 91), would have a distinct advantage over the separate units. Manufacturing and sales experience since that time indicated that his claims were well founded.

I agree with A. B. Singletary, Jr. (R. pp. 77-89, 93-98), that the mechanical unit pictured in said Exhibit A (R. p. 91), consists of three parts, shown by Roman Numeral III; a gas engine which converts heat energy due to the combustion of natural gas (within the gas engine cylinder) into mechanical energy and causes pistons to be displaced, thereby causing shafts to move and flywheels to revolve. This newly created mechanical energy may be transmitted as such by belts, shafting and other means, to more or less distant power-consuming units. In the illustration the power-transmitting unit is labelled Roman Numeral II. This merely transfers mechanical energy from the prime mover (gas engine) to the power consuming unit labelled Roman Numeral I (compressor). Though the assembly shown in Exhibit A is bolted to a common iron bed-plate and set on a common concrete foundation, there are three distinct functions performed by three separate and distinct machine units:

- III. Prime mover converting energy into mechanical energy. (gas engine)
- II. Power transmitting unit.
- I. Power consuming unit. (compressor)

**Ellis P. Gaudet (R. pp. 105-114):**

I am a resident of Port Allen, West Baton Rouge Parish, Louisiana. I graduated from the Louisiana State University in 1933, with a degree of Bachelor of Science, majoring in mechanical engineering. During the school term 1934-1935, I did graduate work in mechanical engineering at the Louisiana State University and taught mechanical engineering classes. My principal work in these classes was the conducting of tests of steam engines, steam pumps, gas engines, etc. Since September, 1935, I have been employed as an engineer by the Supervisor of Public Accounts for the State of Louisiana, and my work in this capacity has brought me in contact with all types of gas engines, compressors and the like, used in the various industries in Louisiana, including the oil and gas industries.

I have studied the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 93-94, 94-98), given in the above entitled and numbered cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company located at Sterlington, Louisiana.

I have also carefully examined and studied the photographs introduced in evidence by appellant marked "Exhibit A" (R. p. 91), for the purpose of identification, which photograph shows equipment similar to that located at the said "Munce Compressor Station". I have also carefully studied the comparison made in the operation of certain oil properties in Caddo Parish, Louisiana, to the operation at the "Munce Compressor Station".

The detailed analysis made of the equipment shown in said photograph and the comparison made in said Single-tary's testimony is correct.

Every installation of an internal combustion gas engine driving a compressor, consists of three separate and distinct operations, namely; the generation or manufacture of mechanical energy or power by the internal combustion gas engine unit; the transmission of this mechanical energy or power from the point of power take-off of the internal combustion gas engine unit to the compressor unit, this transmission may be through one of several mediums such as, belts, chains, gears, shafts or rods; and third, the consumption or use of this mechanical energy by the compressor unit.

Exhibits 1, 2, 3, 4, and 5 (R. pp. 110-114) introduced in evidence by appellant, are actual photographs, taken by me, showing the operation of certain oil wells in one of the oil fields in Louisiana, where one internal combustion gas engine unit, through the medium of rods as transmission units, is used to pump as many as nine oil wells at one time, said oil wells being located as far as one-half mile from the power manufacturing internal combustion gas engine unit.

Exhibit 1, (R. p. 110), shows the North side of a building which is used exclusively to house one 90 horsepower internal combustion gas engine unit which unit is identical in principle of operation to the internal combustion gas engine units used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". This engine converts heat energy of natural gas used as fuel

into mechanical energy or power just as do the internal combustion gas engine units operated by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". Also shown on Exhibit 1, are five rods, all leading from the said internal combustion gas engine unit. These rods are used to transmit the mechanical energy manufactured by the 90 horsepower internal combustion gas engine unit, from said unit to pumping units located on five different oil wells. These rods perform the same function as do the transmission rods used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station". This operation is identical in principle to the transmission of the mechanical energy at the "Munce Compressor Station", the only difference being that in this case the rods are many times the length of the rods at the "Munce Compressor Station".

Exhibit 2, (R. p. 111), shows the South side of the same building used exclusively to house one 90 horsepower internal combustion gas engine unit. On said Exhibit 2, are also shown four rods which lead from the same 90 horsepower internal combustion gas engine unit and transmit the mechanical energy manufactured by said internal combustion gas engine unit from same, to four other oil wells.

On Exhibit 3 (R. p. 112), is shown the same building used exclusively to house one 90 horsepower internal combustion gas engine unit as shown in Exhibits 1 (R. p. 110), and 2 (R. p. 111). Also shown on Exhibit 3 (R. p. 112), is one of the same five rods leading from the North side of said building. I have labelled this rod, "Transmis-



sion Rod". In addition to the building housing the internal combustion gas engine unit and the one transmission rod, Exhibit 3 (R. p. 112), also shows the pumping mechanism at one of the oil wells which is operated by the mechanical energy transmitted from the internal combustion gas engine unit through the transmission rod and used in pumping an oil well. In other words, Exhibit 3 (R. p. 112), shows the entire system on one well; the building housing the source of the mechanical energy, the internal combustion gas engine unit, the transmission rod, and the power consuming unit. This arrangement is identical in principle to that of the manufacture, transmission and consumption of mechanical energy employed by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station".

Exhibit 4 (R. p. 113), gives another view of the same transmission rods leading from the North side of the building housing the 90 horsepower internal combustion gas engine unit, above described. In addition, in the background marked "Well", is shown another power consuming pumping unit located on another oil well. Also shown on this Exhibit 4 (R. p. 113), is a mechanism, which we have marked "A", which is used to change the direction of one of the transmission rods. Marked "B" on said Exhibit, is shown the same transmission rod that is shown on Exhibit 5 (R. p. 114).

Exhibit 5 (R. p. 114), gives another view of the same transmission rod, labelled "B" in Exhibit 4 (R. p. 113), and in the back ground on Exhibit 5, and marked "Well", is shown another well on which is located another power consuming, pumping unit. This Exhibit 5, clearly

shows the long distance that mechanical energy can be transmitted through the medium of a rod.

These five Exhibits (R. pp. 10-14), clearly show that mechanical energy can be, and is, transmitted great distances through the medium of rods as transmission units and that the generation or manufacture of mechanical energy through the use of an internal combustion gas engine unit, is an operation very distinct from the transmission or consumption of that mechanical energy.

As explained in the testimony of A. B. Singletary, Jr., (R. pp. 77-89, 93-98), mechanical energy manufactured by any internal combustion gas engine unit, such as the 90 horsepower engine above described or one of the engines used by the Arkansas-Louisiana Pipe Line Company at its "Munce Compressor Station", is a new and distinct product, of value commercially, and is capable of transmission and use in industry and can be used to operate any sort or type of unit requiring mechanical power.

In the same oil field in which the photographs above described were taken, there are several other oil companies operating other than the one owning and operating the 90 horsepower internal combustion gas engine unit, hereinabove described. These other companies could very easily buy mechanical power for the pumping of their wells from the company operating said 90 horsepower engine. The only thing necessary would be to connect another transmission rod from the 90 horsepower engine to their well. If this were done, there would be the sale of mechanical energy, as such, for use in industry.

**Hamilton Johnson (R. pp. 115-117):**

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from Rollins College in 1893, with the degree of Bachelor of Arts, from Vanderbilt University in 1896, with the degree of Bachelor of Engineering and after an additional year of graduate work at Vanderbilt received in 1897, the degree of Mechanical Engineer. I was engaged continuously in the active practice of the engineering profession for the next twenty-seven years, my work consisting largely of the design and installation of power plants of various kinds. I was for a number of years City Engineer of Jackson, Mississippi. From 1920-1923, I had charge of the design and supervision of the engineering features of the rehabilitation of all the State Institutions of Mississippi, carried out by the Mississippi State Bond Improvement Commission.

In 1923, I came to Baton Rouge, to handle the engineering problems involved in the construction of the new plant of the Louisiana State University. When this work was completed I was appointed head of the department of Mechanical Engineering in the Louisiana State University and have occupied that position continuously since September, 1924. In that capacity I give instruction in machine design and also in the theory and design of internal combustion engines.

I have no personal knowledge of the equipment of the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company nor of the various operations carried on there, but I have carefully examined the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 98-98), Benjamin C.

Craft (R. pp. 117-121), G. F. Matthes (R. pp. 98-103), and Ellis P. Gaudet (R. pp. 105-109), and the different exhibits accompanying them in this case (R. pp. 91, 110-114). If the equipment and method of operation of the compressor station are substantially as shown in their testimony and exhibits, it is my opinion that the conclusions reached by the affiants as to the segregation of the different elements of machinery according to the specific functions performed by each are thoroughly sound and fully justified by the facts set out in their testimony.

In the formal study of machine design all machinery is divided into three classes:

1. Prime movers—machines which receive from some source in nature energy which is not of a kind suitable for useful work and transform this into the mechanical energy of moving solid bodies which may be applied to doing useful work. As examples of prime movers, we have steam boilers and engines and internal combustion engines which utilize the potential heat energy of fuel as their source of natural energy, windmills which utilize the kinetic energy of moving masses of air, water wheels which utilize the kinetic energy of moving masses of water, etc.
2. Machinery of transmission, machine elements adapted to receive mechanical energy from a prime mover and transfer this energy to the place where it is to be used to do work. As examples, we have shafts, rods, belts and pulleys, gear wheels, etc., and in the case of electrical transmission of power a complex system consisting of the electric generator, transformers, wires and motor.
3. Machinery of application, machines adapted to receive the mechanical energy which has been brought to them and apply it to perform the specific



work for which they were designed. Into this latter class, therefore, would fall all machines used to perform specific tasks such as machine tools, pumps, compressors, etc.

Wherever any task is performed by machines as distinguished from human or animal energy all three of these classes of machinery must necessarily be employed, and this is true whether the different units are widely separated or all assembled on a single foundation.

In the case under consideration, as pointed out in the testimony above referred to, the gas engine is the prime mover, the rods leading from the cross-head of the engine to the compressor constitute the machinery of transmission, and the compressor itself is the machine of application which applies the mechanical energy transmitted to it from the prime mover to the specific task of drawing gas from the wells and raising it to the higher pressure necessary for its economical transportation in pipes to a distance.

The transformation of potential heat energy into mechanical energy by the prime mover is, therefore, an entirely distinct operation from the utilization of that mechanical energy by the compressor.

**B. C. Craft (117-121):**

I am a resident of Baton Rouge, East Baton Rouge Parish, Louisiana. I graduated from the Leland Stanford University in 1929 with a degree of Engineer in Mines, specializing in Petroleum Engineering. I worked during the summer of 1929 for the Olympic Refining Company in California. From the Fall of 1929 to 1935, I held the chair

of Assistant Professor of Petroleum Engineering at Louisiana State University. At present, I am Associate Professor of Petroleum Engineering at the above institution. During the summers of 1930 and 1931, I worked as a floorman for the Stovall Drilling Company in both the Richland and Monroe gas fields.

I have visited the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana, and have carefully examined all of the machinery and equipment situated on the site of the said "Munce Compressor Station", including the system of meters, cooling system, separators, and other equipment referred to herein.

I have read and carefully examined the testimony of A. B. Singletary, Jr. (R. pp. 77-89, 93-98), in this cause, pertaining to the plant commonly called the "Munce Compressor Station" of the Arkansas-Louisiana Pipe Line Company, located at Sterlington, Louisiana, I have carefully examined and studied the photographs introduced by appellant, and marked "Exhibit A" (R. p. 91), for the purpose of identification. I have also carefully examined and studied the copy of a map introduced in evidence and marked "Exhibit B" (R. p. 92), for the purpose of identification.

I feel that I am qualified from my engineering experience, both theoretical and practical, to say that the detailed analysis of the equipment shown in the said photograph (R. p. 91), introduced in evidence, is correct.

Any arrangement of an internal combustion gas engine driving a compressor, whether directly coupled or connected through an arrangement of belts or otherwise, can be divided into three separate and distinct units, namely: the internal combustion gas engine unit, prime mover, which manufactures mechanical energy or power by the conversion of heat energy contained in the gas used as fuel into mechanical energy or power, a new product having entirely different properties from the heat energy of the fuel used; second, a compressor unit which unit uses or consumes the mechanical energy manufactured by the internal combustion gas engine unit and, third, the transmission unit, which unit transmits the mechanical energy or power manufactured by the internal combustion gas engine unit, to the power consuming compressor unit.

The analysis and explanation made in the testimony of the said A. B. Singletary, Jr. (R. pp. 77-89, 93-98), of the movement of gas handled by the Arkansas-Louisiana Pipe Line Company from its wells located in the Richland and Monroe gas fields to the plant commonly called the "Munce Compressor Station" by reference to the map marked "Exhibit B" (R. p. 92), correctly describes the operation of the equipment shown on said map.

The gas wells owned by the Arkansas-Louisiana Pipe Line Company are connected to a field gathering system which is the means by which the gas is gathered or collected from the gas wells in the field and delivered to the compressor units located at the "Munce Compressor Station".

The action of the compressor units at the "Munce Compressor Station" caused a lower pressure to exist in

the field gathering lines than would have existed were all of the gas wells allowed to flow into these lines under their own pressures. In fact, had all of these wells been allowed to flow into the field lines under their own rock pressures, only the higher pressure wells would have produced. With the condition of lowered pressure existing in said field gathering lines, all of the wells operated by the Arkansas-Louisiana Pipe Line Company were regulated to produce an allowable quota as fixed by the Louisiana Department of Conservation. The compressor units at the "Munce Compressor Station", which caused this lowering of pressure in the field gathering lines were, therefore, necessary from the viewpoint of production as explained in the testimony of the said A. B. Singletary, Jr. (R. pp. 77-89, 93-98).

It was explained to me by the Superintendent of the "Munce Compressor Station" at the time of my inspection of said plant, that the gas supplied to said station from wells owned by the Arkansas-Louisiana Pipe Line Company and compressed at the "Munce Compressor Station", must be merchantable gas. That is, said gas be in such condition that it can be sold to the consumer. However, said gas was not merchantable because it contained quantities of water and natural gasoline. Large water traps were, therefore, installed in each line delivering gas to said "Munce Compressor Station". The purpose of these water traps was to remove the water and natural gasoline contained in the gas before same was metered in the "Munee Metering Station." These water traps consisted of large vessels, in some cases, equipped with baffles. The gas entered these vessels



through a three inch, or larger, line about half way up from the bottom of said vessels, and due to the large diameter of the vessels as compared to said line, the velocity of flow of the gas was greatly reduced, thereby causing the water and natural gasoline contained in said gas to settle to the bottom of these traps, where same could be blown out when necessary.

The gas, after having passed through these water traps, entered the "Munce Metering Station" where it was metered by both the producing company and the purchaser, the Arkansas-Louisiana Pipe Line Company. The gas after being metered, passed through gate valves into one of three main "Headers" leading to the compressor units. These "Headers" consisted of two twenty inch lines and one sixteen inch line. These "Headers" were, in turn, connected to two transverse "Headers". Due to the large size of these transverse "Headers" and the fact that all of the water and natural gasoline was not removed from the gas by the water traps located ahead of the "Munce Metering Station", there was a further collection of water and gasoline in these transverse "Headers", which was blown out when a sufficient amount had accumulated.

Due to the inefficiency of the water traps located ahead of the "Munce Metering Station" as well as their small capacity, certain quantities of water vapor and gasoline vapor were carried into the compressor units along with the gas.

The gas, after being compressed in said compressor units, was delivered into lines leading to cooling towers. The cooling of the gas in the cooling towers, accomplished

the following: Water and gasoline contained in the gas was condensed; the volume of the gas was reduced, that is, the space occupied by a given quantity of the gas was reduced, because Charles' Law states that with constant pressure, the volume of a gas varies as the absolute temperature, and because of this reduction in space occupied, a larger amount of gas was loaded into the main 20-inch interstate line; corrosion of the main 20 inch interstate line, which would have occurred from gas at high temperature, was reduced; melting of the insulation on the main 20 inch interstate line from the hot gas was eliminated.

At the time of my inspection of the "Munce Compressor Station", a "scrubber" had been installed in the line leading from the cooling tower. The purpose of the said "scrubber" was to remove the remaining quantities of water and gasoline which it was found were not removed by the water traps or elsewhere.

The "Munce Compressor Station" served the following purposes; the generation or manufacture of mechanical power or energy necessary to the operation of any gas compressor; the transmission of this mechanical power or energy from the source of said mechanical energy or power, the internal combustion gas engine units, to the power consuming compressor units; the production of the allowable quota of gas from wells which would otherwise not have been able to produce; the removal of water and gasoline from the natural gas thereby making same suitable for pipeline transportation and sale; the preparation and loading of the gas into an interstate carrier for interstate shipment.

It should be emphasized that each step which removed quantities of gasoline and water from the natural gas, changed the specific gravity of the gas as well as its chemical composition which characterized each as a manufacturing process.

### APPELLEE'S TESTIMONY.

Appellee offered testimony of several employees. Excerpts from this testimony, together with allegations contained in the bill of complaint, further show the type of business in which appellee is engaged.

Appellee alleges that it is a foreign corporation, and in Paragraph three (3) of the bill (R. 1) :

"That petitioner is engaged in the States of Louisiana, Arkansas and Texas in the business of producing, buying, transporting and selling natural gas. In which business it owns and maintains systems of pipelines among which is a twenty inch (20") line extending from Sterlington, Ouachita Parish, Louisiana to a point at or near Blanchard in Caddo Parish, where one of its branches extends further westward to a point in the State of Texas near Waskom, the other extending in a northerly direction into Miller County, Arkansas, thence into the state of Texas through Atlanta and Texarkana and other points, and thence into the State of Arkansas to Little Rock in that state."

Appellee further shows, in Paragraph four (4) of its bill (R. 2) :

"That from August 1st, 1932, until July 31st, 1933, the Natural gas transported through the pipelines described was in part produced by petitioner from

leases owned and operated by it in the Monroe and Richland fields in Louisiana, and in part purchased from other producers of gas in those fields, - -".

Appellee, in Paragraph six (6) of the bill alleges (R. 2) :

"That the lines described constitute the sole means of marketing the gas produced and purchased by petitioner in the Monroe and Richland fields; and that the pressure necessarily maintained in such lines is such that wells in the field referred to cannot produce their natural flow into the lines to permit the transportation and marketing of the product for which purpose petitioner owns and operates at Sterlington in Ouachita Parish, Louisiana, a compressor station known and referred to herein as the Munce Compressor Station."

Appellee, in Paragraph nine (9) of its bill, alleges (R. 3) :

"That from August 1st, 1932, to July 31st, 1933, all gas delivered into petitioner's twenty inch line herein described at Sterlington and transported through said line to various points in Louisiana, Texas and Arkansas was compressed at the Munce Compressor Station through use of the equipment situated there; that such compression was essential and necessary to build up sufficient pressure in the line by volume of gas therein to permit constant withdrawals at distant points and the consequent transportation in the interstate commerce described; that the pressure in the line necessarily maintained for such purposes exceeded the rock pressure of wells from which gas was received and that the product of such wells could not have been delivered into the line nor could they have produced at their natural flow and without the compression described."



Appellee, in Paragraph sixteen (16) of its bill, subsection B, alleges (R. 5):

"In the alternative, petitioner shows that should the equipment and machinery described not be considered as an essential and necessary instrumentality of the interstate business conducted by petitioner, that it is an essential and necessary instrumentality for the production of gas in the Monroe and Richland fields as described herein, - - -."

Appellee offered the testimony of W. E. Nestor, who stated that he has been superintendent of the plant at Munce since 1920. He further stated that the Munce Station at Sterlington, involved in this litigation, consists of (R. 49):

"- - - ten 1,000 horsepower Cooper Bessmer gas burning engines, directly connected to ten gas compressors, and two 250 horse power gas burning engines directly connected to electric generators; - - -"

Appellee's next witness was Walter A. Stewart, Chief Clerk of the Gas Accounting Department of said Company. The testimony of this witness, in part, was as follows (R. 63):

"The main pipe lines, including the 20-inch gas pipeline from Sterlington, Ouachita Parish, Louisiana, to Waskom, Texas, are provided at all points of intake and outlet with measuring meters equipped in many cases with thermometers. These meters carry charts automatically recording amounts of gas passing through said meters and these charts are changed daily, - - -"

The witness further stated that (R. 63) :

"From the original meter charts deponent tabulated, during the year ending July 31st, 1933, amounts of gas received and delivered into and from the said 20-inch pipeline, and from such original records authorized payment by appellee for all gas received from purchasers, and rendered invoices, which were duly paid, for all gas sold from said pipelines."

Appellee's third witness was Robert H. Johnston, Chief Gas Dispatcher of the Arkansas-Louisiana Pipe Line Company. This witness stated that one of his duties is to see that sufficient gas is loaded into the 20 inch pipeline leading from the Munce Station to points within and without the State, to take care of the demands for gas by consumers. This witness further stated (R. 69) :

"The gas which is thus required in the Company's business to be delivered into Texas and Arkansas through said 20-inch line can not be delivered from the wells producing in the Monroe and Richland fields without the use of power in the form of compression; gas from wells in the Richland gas field, which is delivered into the 20-inch line, arrives at Sterlington averaging about 90 pounds per square inch; gas delivered into said line from the Monroe gas field is delivered at Munce Compressor Station with an average pressure of about 220 pounds per square inch."

The witness further stated that (R. 70) :

"All of the gas produced in the Richland gas field is produced at pressures less than 275 pounds, so that none of said gas can be delivered into the 20-inch line, herein referred to, without the use of power in the form of compression where the said

line has pressures sufficient to meet the requirements of the company's business; There are also in the Monroe gas field many wells with working pressures so low that the gas from such wells could not be utilized and delivered into the said 20-inch line without the use of compression for the reasons herein mentioned. Munce Compressor Station is some twenty-five miles from wells in Richland Parish gas field, and pressures of the gas upon arrival at Munce Station from that field are lower than working pressures at the wells, and this fact likewise requires the use of additional compression in order to deliver gas produced in the Richland field into the appellee's line."

### **SPECIFICATION OF THE ASSIGNED ERRORS INTENDED TO BE URGED.**

Appellant intends to urge all of the fifteen errors assigned. (R. 135-140).

Specifically appellant will urge all of the fifteen errors assigned:

(1)

The Court erred in holding that the tax levied by Section 3 of Act 6 of 1932, insofar as appellee is concerned is a direct burden on interstate commerce and is, therefore, violative of the commerce clause of the Constitution of the United States.

(2)

The Court erred in holding that the prime movers (internal combustion gas engines which convert, produce, generate or manufacture mechanical energy or power from heat energy in natural gas), the machinery of trans-

mission (rods or shafts used to transmit mechanical energy or power from the point of generation to the point of use or application), and the machinery of application (compressors which use the mechanical energy or power in compressing the natural gas and loading it into the twenty-inch interstate main), for the purpose of this case constitute one unit, and that the one unit in its entirety, is an instrumentality of interstate commerce.

## (3)

The Court correctly held that, in the language of the Court, "there is no dispute as to the physical or mechanical nature of these operations, (1. Prime movers which produce, generate or manufacture mechanical energy or power; 2. Machinery of transmission, consisting of rods or shafts which transmit the mechanical energy or power after its production, generation or manufacture from the place of production, generation or manufacture, to the point of use where it is consumed by the machinery of application, the compressors; 3. The compressors, which consume the mechanical energy or power, after its production, generation or manufacture, and transmission), and we find these additional facts as described by the witness (for the state) \* \* \*," but the Court erred in failing to accept the conclusions and opinions of the State's expert witnesses as to the effect. (Parenthesis added).

## (4)

The Court erred in holding that the prime movers (internal combustion gas engines, that are bolted down to concrete and have a permanent situs in Louisiana, and are used by appellee to convert, produce or manufac-



ture the heat energy in natural gas into mechanical energy or power which is transmitted through rods or shafts to the point of consumption), are instrumentalities of interstate commerce.

## (5)

The Court erred in not holding that the prime movers in the case at bar are engaged in an intrastate function, viz., that of producing, generating or manufacturing mechanical power or energy, and that appellee is engaged in the intrastate business in Louisiana of producing, generating or manufacturing mechanical power or energy and is subject to the tax levied by Section 3 of Act 6 of 1932, which levies an excise, license or privilege tax on the business of producing and generating mechanical energy or power, measured by the horse power capacity of the prime movers used to produce, manufacture or generate such power or energy.

## (6)

The Court erred in holding that the business or operation in Louisiana of appellee, which is both intrastate and interstate, "cannot be dissected or torn apart so as to make of it distinct entities for the purpose of State taxation, but that it must be treated as a unit;" the Court further erred in not holding that when appellee produces, manufactures and generates mechanical power or energy in Louisiana by the use of prime movers, that such operation or business in Louisiana is intrastate in character, and is subject to the tax levied by Section 3 of Act 6 of 1932, even though such energy or power may ultimately be transmitted and used in both intrastate and

interstate operations, or even if it should ultimately be used exclusively to operate an instrumentality of interstate commerce; the Court erred in holding that the State has no right to assess an excise, license or privilege tax on the intrastate business of one engaged in both intrastate and interstate commerce.

(7)

The Court erred in failing to hold that appellee, in operating the two prime movers (internal combustion gas engines) in Louisiana at its Munce Plant with 250 horsepower each, for the purpose of producing, generating or manufacturing mechanical energy or power, which energy or power is ultimately consumed by electric generators which generate electricity for lighting buildings, operating repair machines, repair shops and air compressors, was engaged in the intrastate business of producing, generating or manufacturing mechanical energy or power and is subject to the tax levied by Section 3 of Act 6 of 1932.

(8)

The Court erred in failing to hold that the tax levied by Section 3 of Act 6 of 1932 is an excise, license or privilege tax levied on the privilege of producing, generating or manufacturing mechanical power or energy in Louisiana as a distinct act of producing, and without regard to its subsequent use.

(9)

The Court erred in failing to hold that, so far as appellee in the case at bar produces, manufactures or generates mechanical energy in Louisiana, its business is purely intrastate, subject to State taxation and control.

(10)

The Court erred in holding that, in the language of the Court, "The operation of its internal combustion engines is for the sole purpose of applying their power to the gas—," and further erred in failing to hold that it is the compressors, operated by appellee that draw the gas from the wells through the field-gathering lines and forces it into the twenty-inch interstate main, and that the mechanical power or energy manufactured, produced or generated by the prime movers is transmitted to the machinery of application, the compressors, and it is the compressors that aid in the production and compression of the natural gas.

(11)

The Court erred in failing to hold that the natural gas enters interstate commerce only after its actual physical delivery into the twenty-inch interstate main at appellee's Munce Station; the Court further erred in failing to hold that the gathering of the gas in the field-gathering systems by both appellee, and persons from whom appellee purchases gas, is intrastate commerce; the Court further erred in not holding that the conversion of natural gas from an unmerchantable product to a merchantable product at the Munce Station constitutes a manufacturing process and an interruption in the transportation of the natural gas, and is further reason the gas is not in interstate commerce until it is actually physically within the twenty-inch interstate main at appellee's Munce Station.

(12)

The Court erred in finding that appellee's only business in Louisiana is that of transporting natural gas by pipe line into other states, and erred in failing to find that appellee is engaged in intrastate commerce in Louisiana in owning, operating and producing natural gas from the soil in Louisiana, maintaining a field-gathering system, intrastate in character, which gathers the gas from the wells and carries it to a central point on the edge of the producing area where it is converted from an unmerchandiseable product to a merchandiseable product, as the record shows, and is engaged in an intrastate operation in the generation, manufacture and conversion of heat energy in natural gas by the use of internal combustion gas engine units, into mechanical power, which is a new product of commercial value, capable of measurement, sale and transmission, all of which constitutes intrastate commerce, and is subject to State regulation and taxation.

(13)

In the alternative, and in the alternative only, should the tax levied by Section 3 of Act 6 of 1932 be held to be on interstate commerce, which is denied by appellant, then, and in that event only, appellant assigns as error the failure of the Court to find that the tax involved falls not directly on interstate commerce, but indirectly, and not violative of the commerce clause of the Constitution of the United States; the Court further erred in failing to hold that when a tax is, as here, levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that "it is clear that it is not imposed with the covert pur-



pose or with the effect of defeating federal constitutional rights," it is not a prohibited burden on interstate commerce, but is a valid exercise of the power of the State to tax.

(14)

The Court erred in failing to find that the machines of application in the case at bar, viz., the compressors, can be operated by steam or electricity, in addition to the mechanical energy or power produced, generated or manufactured by internal combustion gas engines, as in the case at bar.

(15)

The Court erred in granting the permanent injunction herein against appellant and in favor of appellee.

### SUMMARY OF ARGUMENT.

Section 3 of Act 6 of 1932 levies an excise, license or privilege tax on persons, firms, corporations, or associations of persons, for the privilege of manufacturing, producing or generating mechanical or electrical power or energy in Louisiana.

The Arkansas-Louisiana Pipe Line Company, appellee herein, is engaged in the business in Louisiana of manufacturing, producing or generating mechanical energy or power by converting the heat energy in natural gas into mechanical energy or power by the use of internal combustion gas engines, which operation by appellee is intrastate or local in character.

The mechanical energy or power so manufactured, produced or generated is transmitted from the point of manufacture, generation or production to the point of use or consumption by means of rods.

The machinery of application, or machinery which uses said mechanical power or energy are compressors. The compressors are used by appellee to produce gas in Louisiana and gather it in the field, and then is used to compress the gas so produced and gathered and deliver it into the 20-inch main pipe line, one terminus of which is at its Munce Station. Appellee also operates two additional internal combustion gas engines by which mechanical energy or power is manufactured, produced or generated, which power is transmitted and used by electric generators, which generate electricity to be used in lighting the buildings at the Munce Station, and to operate machine shops and air compressors.

The tax levied by Section 3 of Act 6 of 1932 is a tax on the specific privilege of manufacturing, generating or producing mechanical energy or power in Louisiana, and has no bearing whatever on the transmission, use or consumption of the mechanical power or energy after it has been so manufactured, generated or produced.

Mechanical energy or power, after being manufactured, generated or produced, is capable of transmission to the point of consumption or use, is capable of measurement and sale, and is an article of commerce.

The tax levied by Section 3 of Act 6 of 1932 being on the person for the privilege of manufacturing, generating, or producing mechanical energy or power, and

having no reference whatever to the transmission and ultimate use of the power or energy, is not, and could not, be a direct burden on interstate commerce, even if the power so manufactured, generated or produced is ultimately transmitted and used in the furtherance of interstate commerce.

There is a definite distinction between manufacture, production, or generation, and the transmission and use and consumption of mechanical energy or power; the former, as in the case at bar, being local and intrastate in character, even though the latter, that is, the consumption of the mechanical power or energy may be employed to further interstate commerce.

Even though mechanical energy or power is generated, produced or manufactured in Louisiana, by internal combustion gas engines permanently located in Louisiana, with the intent and knowledge that it is to be transmitted to the point of consumption and there used in furtherance of interstate commerce, still the manufacture, generation or production is an operation intrastate in character, as in the case at bar, and an excise, license or privilege tax upon the person, for the privilege of so manufacturing, generating or producing mechanical energy or power, is not a direct burden on interstate commerce.

Even if the Court should hold that the compressors, the transmission rods, and the internal combustion gas engines are instrumentalities of interstate commerce, the tax levied by Section 3 of Act 6 of 1932 is not a direct burden on interstate commerce, but is indirect, and, therefore, is not in violation of the commerce clause of the Federal Constitution.

The mechanical energy or power manufactured, generated or produced by the two 250 horsepower internal combustion gas engines, which power or energy is transmitted and used to operate electric generators for the purpose of generating electrical energy, which is used in lighting the buildings at the Munce Station, to operate machine shops and air compressors, is not used in the furtherance of interstate commerce, and it follows that the tax levied by Act 6 of 1932, insofar as these engines are concerned, could not be a direct burden on interstate commerce.

The gas produced and gathered, by use of the compressors involved, and compressed and loaded into the 20-inch main pipe line at the Munce Station, does not move in interstate commerce until it is actually and physically loaded into the 20-inch pipe line.

### ARGUMENT.

#### Point I.

#### **ACT NO. 6 of 1932 LEVIES AN EXCISE, LICENSE OR PRIVILEGE TAX FOR THE PRIVILEGE OF MANUFACTURING, GEN- ERATING OR PRODUCING MECHANICAL ENERGY OR POWER.**

Act No. 6 of 1932, levies what is known as the Power Tax Law of Louisiana. Section 1 of the Act levies an excise, license or privilege tax upon every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity in Louisiana, which tax is measured by the gross receipts from



the sale of the electricity in the State, except that electricity that is sold for resale.

Section 2 of the Act levies the same type of tax at the same rate upon those engaged in the business of selling electricity not manufactured or generated by him or it, with the measure of the tax the gross receipts from the sale of electricity, excluding receipts from the sale of electricity made for resale.

In order to collect an excise, license or privilege tax from persons and corporations in the State that manufacture, produce or generate their own electrical or mechanical power or energy, the Legislature, by Section 3 of the Act, levied, in addition to all other taxes imposed by law upon every person, firm, corporation or association of persons, an excise, license or privilege tax for the privilege of generating, manufacturing or producing electrical or mechanical power or energy which has not been subject to the tax imposed by Sections 1 and 2 of the Act, which tax is measured by the horsepower capacity of the machinery or apparatus known as "prime mover" or "prime movers" operated and used by such person, firm, corporation or association of persons, for the purpose of producing, manufacturing or generating power or energy.

Section 3 specifically provides that any power that is secured from a person, firm, corporation or association of persons, subject to the tax imposed by Sections 1 or 2 of the Act, shall not be liable for the tax imposed by Section 3.

It is very plain, therefore, that the primary purpose of Act 6 of 1932 is to impose a license tax for the privilege

of producing power. *Union Sulphur Company v. Henry A. Reid*, 17 F. Supp. 32; *State ex rel Porterie, v. Hunt*, 182 La. 1073, 162 So. 777, 103 A. L. R. 9; *Bromley v. McCoughan*, 280 U. S. 124, 50 S. Ct. 46. See also dissenting opinion of Judge Hutcheson in case at bar, (R. 23).

The tax levied by Act No. 6 of 1932 is exacted as a specific privilege tax for the privilege of generating, manufacturing or producing power or energy in the State of Louisiana, and does not, at all, fall upon or condition appellee's privilege of conducting the business of transporting natural gas out of the State in interstate commerce.

Counsel for appellee will probably urge that the tax levied by Act 6 of 1932 is upon the entire business of the appellee, both intrastate and interstate. The Statute involved, as stated elsewhere in this brief, was considered by the Louisiana Supreme Court in the case of *State ex. rel., Porterie v. Hunt, supra*. The Supreme Court of Louisiana in that case, we submit, did not hold that the tax levied by the Statute is upon the entire business of the person, firm, corporation or association of persons manufacturing, producing or generating power or energy. This question was not before the Court in that case. The Supreme Court of Louisiana in the *Hunt Case*, 182 La. 1078, stated the points urged by defendant in that case as follows:

"The defendant attacks the constitutionality of Act No. 6 of 1932 on five grounds, viz.:

"(1) That the tax levied under section 3 is a property tax levied on property which has borne the maximum amount of taxation permitted under article 10, section 3, of the State Constitution.

"(2) That the tax, so far as it applies to defendant, is violative of section 21 of article 10 of the State Constitution, prohibiting the levying of any tax other than a severance tax on oil and gas rights.

"(3) That the tax is violative of section 8 of article 10 of the State Constitution, in that the tax is arbitrarily fixed and is neither classified, graduated, nor progressive.

"(4) That the statute is violative of section 1 of article 10 of the State Constitution (as amended, see Act No. 162 of 1926), requiring that taxation shall be uniform, and of the Fourteenth Amendment of the Federal Constitution, in that it denies defendant the equal protection of the law.

"(5) That the statute is violative of section 2 of article 1 of the State Constitution and of the Fourteenth Amendment to the Federal Constitution, in that it deprives defendant of its property without due process of law.

"We shall discuss and dispose of defendant's contentions in the order of their statement."

The important question before the Louisiana Supreme Court was whether or not the tax levied by Act 6 of 1932 is a property tax or an excise, license or privilege tax, and the Court held that it was an excise, license or privilege tax and it was not levied upon the property itself.

The statute under attack does not undertake to, and does not, lay a tax upon the business of appellee which constitutes interstate commerce, or the privilege of engaging in it. It merely exacts of the appellee, who is engaged in both intra and interstate commerce, as well as others in the State of Louisiana similarly situated, a privilege

tax upon the generation, production or manufacture of power or energy in Louisiana. The uses of that power or energy are not taxed. The business in which the power or energy is used is not taxed. The generation, manufacture or production of the energy, and that alone, is taxed. The measure of the tax is the horsepower capacity of the prime movers employed to generate, manufacture or produce it.

### **Point II.**

#### **ARKANSAS-LOUISIANA PIPE LINE COMPANY ENGAGED IN BUSINESS IN LOUISIANA OF MANUFACTURING OR GENERATING MECHANICAL POWER OR ENERGY: SAID BUSINESS INTRASTATE IN CHARACTER.**

The uncontradicted testimony and evidence offered by appellant in the case at bar (R. 77-121), positively show the Arkansas-Louisiana Pipe Line Company is engaged in business in Louisiana of manufacturing or generating mechanical power or energy by the use of internal combustion gas engines.

The opinion of the three judge court (R. 124-125), rendered on the merits of this case, stated that, "There is no dispute as to the physical or mechanical nature of these operations described by the witnesses without, however, accepting the conclusions, or opinions which they advance as to effect." The complete statement by the Court follows, (R. 124-125):

"The evidence before us is the same, except that respondent has offered additional affidavits to show the mechanical operation of the compressor



station and its accessories, together with expert opinions of the witnesses as to the effects. The purpose was to sustain the contention of respondent that there is a distinct operation amounting to a manufacture of mechanical power before it is used to force the gas through the pipe lines and to thereby demonstrate that the case is parallel to that of *Utah Power & Light Co. v. Pfof*, 286 U. S., 165, in which a similar tax was sustained. The further contention is made by defendant from these facts that the gas does not enter the stream of interstate commerce until it passes through the condensers into the twenty-inch pipeline through which it is conveyed to points of sale in the State of Texas and Arkansas. There is no dispute as to the physical or mechanical nature of these operations and we find these additional facts as described by the witnesses without, however, accepting the conclusions or opinions which they advance as to effect."

By order of the Court, the opinion rendered by it on May 22, 1937 (R. 124-132) stands as the findings of fact under Equity Rule 70½, 28 U. S. C. A., Section 723 (R. 133).

The Court, therefore, on the merits in the case at bar, found as facts the testimony and evidence offered by appellant (R. 77-121), as to the "physical or mechanical nature" (R. 125), of the operations of the Arkansas-Louisiana Pipe Line Company at the Munce Station, involved in this litigation.

The facts as to the "physical or mechanical nature" proven by the testimony and evidence offered by appellant, as found by the Court (R. 125), follow:

1. Appellee, (Arkansas-Louisiana Pipe Line Company) owns and operates, at its Munce Station in Lou-

isiana, 10 four cylinder 1000 horsepower Cooper Bessemer Internal Combustion Gas Engines that manufacture or generate mechanical energy or power by converting the heat energy in natural gas into mechanical energy or power, by the method described in the testimony and exhibits in the record. (R. 2, 77-121).

(For complete description of how the mechanical energy or power involved is manufactured or generated from the heat energy in gas, see pages 78 and 79 of the testimony of A. B. Singletary, Jr., an engineer, and Exhibit "A" (R. 91), and page 104 of the Record; also testimony of other witnesses.— (R. 77-121).

2. That mechanical energy or power generated or manufactured by internal combustion gas engines is capable of and is often transmitted long distances to the point where it is used to operate some piece of machinery that requires or is capable of being operated by mechanical energy or power. (R. 83, 106-109; 110-114 and other testimony, R. 77-121).

3. Mechanical power or energy, such as is manufactured or generated by the 10 four cylinder 1000 horsepower internal combustion gas engines operated by the Arkansas-Louisiana Pipe Line Company, can be transmitted to the point of use or consumption by belting, chains, shafting, ropes, etc. (R. 101, and other testimony; R. 110-114).

4. The 10 four cylinder 1000 horsepower internal combustion gas engines used by appellee to manufacture or generate mechanical power or energy are permanently affixed to a concrete foundation at the Munce Station in

Louisiana, and have a permanent situs in this State. (R. 101, 105, 91).

5. The mechanical power or energy generated, manufactured or produced in the manner aforementioned by the 10 four cylinder 1000 horse power internal combustion gas engines is transmitted or conveyed to the machinery of application, or the point of use or consumption, (the compressors), through the medium of rods. (R. 91, 77, 78, 79, 80, 81, 83, 95, 99, 100, 101, 105, 106, 107, 115, 116, 118).

6. The machinery of application, or in other words, the machinery that requires mechanical power or energy in order to perform useful work, and which uses or consumes the mechanical energy or power in the performance of useful work, in the case at bar, are the compressors. (R. 91, 77-81, 83, 95, 99-101, 105-107, 115, 116, 118).

(The mechanical energy or power generated, manufactured or produced by the 10 four cylinder 1000 horsepower internal combustion gas engines is capable of transmission and use in industry and can be used to operate any sort or type of machinery requiring mechanical energy or power (R. 79). The machinery of application (compressors in case at bar) could be at a point distant from the internal combustion gas engines (R. 84), and under such conditions the transmission rods would have to be of sufficient length to convey or transmit the mechanical power or energy to the consuming machinery (R. 84); one internal combustion gas engine can produce, generate and manufacture enough mechanical power or energy to operate several pieces of machinery of application, (R. 84), the mechanical energy or power being transmitted through the medium of rods. [R. 84]).

7. The Arkansas-Louisiana Pipe Line Company, at its Munce plant in Louisiana, operates three separate and distinct units (R. 77, 91, and other testimony 77-121). Each of these units are separate and distinct. (R. 78, 91 and other testimony, R. 77-121).

- (1) The internal combustion gas engine unit, marked Roman Numeral III on Exhibit A (R. 91) is a unit and complete in itself (R. 78 and other testimony R. 77-121).
- (2) The transmission unit is marked Roman Numeral II on Exhibit A (R. 91), and is a separate and distinct unit (R. 77, 79, 99).
- (3) The machinery requiring mechanical energy or power for its operation is the compressor (R. 80). This machinery is marked by Roman Numeral I on Exhibit A (R. 91). This machinery is separate and distinct and complete in itself (R. 77, and other testimony R. 77-121).

8. The Arkansas-Louisiana Pipe Line Company also operates at its Munce Station two 250 horse power internal combustion gas engines (R. 2, 3, 50). These two internal combustion gas engines convert the heat energy in gas into mechanical energy, which is transmitted to and operates two electric generators (50, 2, 3, 93). The electrical energy so generated is used to light buildings, operate machine shops and air compressors (R. 3).

The undisputed testimony and evidence in this case shows that the mechanical energy produced, manufactured or generated from the heat energy of natural gas is a distinct article of commerce, capable of measurement and sale, and at times is measured and sold, (R. 96, and other testimony, 77-121). The record, (R. 96), further shows



conclusively that the mechanical energy produced, manufactured or generated at the Munce Plant in the case at bar has a commercial value independent of the operation of the compressors which use this particular mechanical energy, just as would electrical energy; that in each case, transmission is necessary, whether it be mechanical or electrical energy, to the point of use or consumption.

### Point III.

#### COMPRESSORS.

Funk and Wagnall's New Standard Dictionary, at page 545, defines compressors as follows: "Compressor—A machine or apparatus for compressing air, gases or other substances."

Webster's New International Dictionary, Second Edition, at page 550, defines compressors as follows: "Compressor—A machine for compressing something, as air for motive power."

Compressors are machines complete within themselves and are distinct units and perform a distinct function or work. (R. 77-121).

It requires energy or power to operate compressors. (R. 77-121).

### Point IV.

#### UTAH POWER & LIGHT CO. v. PFOST.

The principle of jurisprudence established by this Court in the case of *Utah Power & Light Company v. Pfof*, 286 U. S. 165, 52 S. Ct. 548, is determinative of the issues in the case at bar. In that case, a suit was brought

to enjoin the enforcement of an act of the Idaho Legislature levying a license tax on the manufacture, generation or production, within the state for barter, sale or exchange of the electricity and electrical energy. The Utah Power & Light Company, a Maine corporation doing business in Utah, Idaho and Wyoming, was engaged in generating, transmitting and distributing electrical power and energy for sale to consumers in three states, and in interstate commerce among them.

The Utah Power & Light Company owned generating stations in Idaho and transmission lines across boundaries into other states. The Utah Power & Light Company, by means of generators, converted the mechanical energy in falling water into electrical energy, and after its generation, the electrical energy was transmitted by means of wires into other states.

The State of Idaho contended that the tax involved in that case was laid upon the generation of electrical energy as a distinct act of production, and without regard to its subsequent transmission. In the case now before the Court, the State of Louisiana contends that the tax is an excise, license or privilege tax for the privilege of generating, producing or manufacturing mechanical energy, and is on the person for the privilege of performing the distinct act of production, without regard to the subsequent use of the energy.

Idaho further contended that the process of generation is one of converting mechanical energy into electrical form; that the resulting change is substantial and is a change in the physical characteristics of the energy in

respect of voltage, current and character as alternating or direct current, according to the design of the mechanical generating devices. The State of Louisiana in the case at bar contends that the change in the form of energy, when the heat energy in natural gas is converted to mechanical energy by use of the internal combustion gas engines, is a change in the physical characteristics of the energy, the mechanical energy thus produced, manufactured or generated being measured by horsepower.

Idaho further contended that the tax was measured by the amount of electrical energy generated, without regard to its subsequent transmission; that such transmission is subsequent to, and separable from, generation, and, in effect, corresponds to the transportation of goods after their manufacture. The State of Louisiana, in the case at bar, contends that the tax levied by the act now before the court is a specific tax for the privilege of generating, manufacturing or producing the mechanical energy or power, irrespective of its subsequent transmission and use, and that the transmission of said mechanical energy or power is subsequent to its manufacture, generation or production, and that the use of the mechanical energy or power by the compressors comes after its manufacture, generation, or production and transmission.

Idaho further contended that the generation of electrical energy was local, and only its transmission was interstate commerce. Louisiana, in the case at bar, contends that the manufacture, production or generation of the mechanical energy or power involved is local and intrastate in character, it being generated, manufactured or

produced by internal combustion gas engines bolted down to concrete and having a permanent situs in Louisiana.

Idaho further contended that since the tax levied by the Idaho Statute was imposed with respect of generation, it was not invalidated by reason of any intent on the part of the producer to transport it across state lines. Louisiana, in the case at bar, contends that the tax levied by the Statute before the Court is imposed in respect of generation, manufacture or production of mechanical power or energy by the internal combustion gas engines, and that the tax is not invalidated by reason of the intent on the part of the producer to transmit such mechanical energy or power to compressors which may be engaged partly in intrastate and partly in interstate commerce.

This Court, in the *Utah* case, sustained the contention of the State of Idaho and upheld the validity of the tax, and in the course of the opinion, said:

"From the foregoing greatly abbreviated but, for present purposes, we think sufficient statement of the views of the respective parties, it is apparent that in the last analysis the question we are called upon to solve is: Upon the facts of the present case, is the generation of electrical energy, like manufacture or production generally, a process essentially local in character and complete in itself; or is it so linked with the transmission as to make it an inseparable part of a transaction in interstate commerce? From the strictly scientific point of view, the subject is highly technical; but in considering the case, we must not lose sight of the fact that taxation is a practical matter, and that what constitutes commerce, manufacture, or production is to be determined upon practical considerations.



"Electrical energy has characteristics clearly differentiating it from the various other forms of energy, such as chemical energy, heat energy, and the energy of falling water. Appellant here, by means of what are called generators, converts the mechanical energy of falling water into electrical energy. Thus, by the application of human skill, a distinct product is brought into being and transmitted to the places of use. The result is not merely transmission; nor is it transmission of the mechanical energy of falling water to the places of consumption; but it is, first, conversion of that form of energy into something else, and, second, the transmission of that something else to the consumers. While conversion and transmission are substantially instantaneous; they are, we are convinced, essentially separable and distinct operations. The fact that to ordinary observation there is no appreciable lapse of time between the generation of the product and its transmission does not forbid the conclusion that they are, nevertheless, successive and not simultaneous acts.

"The point is stressed that in appellant's system electricity is not stored in advance, but produced as called for. The consumer in Utah, it is said, by merely turning a switch, draws directly from the water fall in Idaho, through the generating devices, electrical energy which appears instantaneously at the place of consumption. But this is not precisely what happens. The effect of turning the switch in Utah is not to draw electrical energy directly from the water fall, where it does not exist except as a potentiality, but to set in operation the generating appliances in Idaho, which thereupon receive power from the falling water and transform it into electrical energy. In response to what in effect is an order, there is production as well as transmission of a definite supply of an article of trade. The manufacture to order

of goods and their immediate shipment to the purchaser furnishes a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference; although inference which seems unavoidable. The process by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill.

"The apparent difficulty in perceiving the analogy arises principally from the fact that electrical energy is not a substance; at least in common meaning. It cannot be bought and sold as so many ounces or pounds, or so many quarts or gallons. It has neither length, breadth, nor thickness. But that it has actual content of some kind is clear, since it is susceptible of mechanical measurement with the necessary certainty to permit quantitative units to be fixed for purposes of barter, sale, and exchange. However lacking it may be in body or substance, electrical energy, nevertheless possesses many of the ordinary tokens of materiality. It is subject to known laws; manifests definite and predictable characteristics; may be transmitted from the place of production to the point of use and there made to serve many of the practical needs of life.

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce." \* \* \*

The only difference, we submit, between the *Pfost* case *supra*, and the case at bar, is that the new product, of value commercially, capable of measurement and sale, is manufactured, transmitted and used by the same person, whereas in the *Utah* case, the new product was transmitted and sold to another party.

#### Point V.

### MECHANICAL ENERGY OR POWER IS PROPERTY, AND ITS PRODUCTION, GENERATION, OR MANUFACTURE IN CASE AT BAR IS LOCAL AND INTRASTATE OPERATION.

In the recent case of *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 330; 56 S. Ct. 466, 475, this Honorable Court held that, "the mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced constitute property belonging to the United States. See *Green Bay & M. Canal Company v. Patten Paper Company*, 172 U. S. 58, 80, 19 S. Ct. 97, 101, 43 L. Ed. 364; *United States v. Chandler-Dunbar Water Power Company*, 229 U. S. 53, 72, 73, 33 S. Ct. 667, 57 L. Ed. 1063; *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 170, 52 S. Ct. 548, 76 L. Ed. 1038."

It would certainly follow that the mechanical energy produced, generated, and manufactured by appellee by converting the heat energy in natural gas into mechanical energy would be property, and the production, manufacture and generation of this property, which is a distinct article of commerce, capable of measurement and sale, capable of

transmission to the point of use, is an intrastate function and operation, even though the new product, viz., mechanical energy, may be used to further interstate commerce. The tax is on the privilege of producing, manufacturing, and generating the new product in Louisiana, and is not on the use nor on the business in which it is used. The Court, in the recent case of *Carter v. Carter Coal Company*, 298 U. S. 238, 303; 56 S. Ct. 855, 869, said:

"In *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178, 43 S. Ct. 526, 529, 67 L. Ed. 929, we said on the authority of numerous cited cases: 'Mining is not interstate commerce, but like manufacturing, is a local business, subject to local regulation and taxation. \* \* \* Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce.'

"The same rule applies to the production of oil. 'Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce.' *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210, 235, 52 S. Ct. 559, 565, 76 L. Ed. 1062, 86 A. L. R. 403. One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the



state; in respect of the latter, to regulation only by the federal government. *Utah Power & L. Co. v. Pfost*, 286 U. S. 165, 182, 52 S. Ct. 548, 76 L. Ed. 1038. Production is not commerce; but a step in preparation for commerce. *Chassaniol v. Greenwood*, 291 U. S. 584, 587, 54 S. Ct. 541, 78 L. Ed. 1004."

### Measurement and Sale of Mechanical Energy or Power.

Mechanical energy or power can be transmitted long distances and can be sold. It can be sold at a flat rate per horsepower or by the horsepower hour, day, month or year. If sold by a flat rate per horsepower, it is only necessary for the vendee to determine how much horsepower he needs for his power consuming unit. This method is applicable where the power required by the vendee is constant or continuous. If for instance, the power consuming unit is a pump, handling water or other liquid, knowing the volume handled in gallons per minute and the head against which the pumps act in pounds per square inch, the horsepower of this unit is determined by the use of the formula: Horsepower equals gallons per minute times pounds per square inch head divided by a constant. See "*Kent's Mechanical Engineer's Handbook, Tenth Edition*," page 823.

If the power requirements are variable, it is necessary that a recording transmission dynamometer be installed between the prime mover of the vendor and the power consuming unit of the vendee in order to ascertain the amount of power consumed in horsepower hours, days, months or years. See "*Experimental Engineering*" by

*Rolla C. Carpenter, M. S., C. E., M. M. E.; Second Revised Edition, page 219.*

This recording transmission dynamometer performs a function similar to the watt hour meter used in recording the amount of electrical energy or power sold.

### Point VI.

#### **APPELLEE'S INTRASTATE OPERATIONS IN LOUISIANA: PRODUCTION AND GATHERING OF GAS: PRODUCTION OF MECHANICAL ENERGY.**

The three-judge court, in the opinion making the preliminary injunction permanent, (R. 125), states that: "As the name indicates, the plaintiff's business is one of transporting natural gas by pipe line, more than 96% of which is done in interstate commerce, as conclusively as if it operated tank cars in transporting the kindred mineral, crude oil, into the other states for sale." We submit, with respect, that it is only in transmitting gas across the state lines that appellee is engaged in interstate commerce. Appellee is also engaged in Louisiana in the business of producing, buying, transporting and selling natural gas, (R. 3). As a producer of natural gas in Louisiana, appellee must pay the State of Louisiana the Severance Tax levied by the laws of the State of Louisiana for the privilege of severing the gas. *Gulf Refining Company of Louisiana v. McFarland*, 154 La. 251, 97 So. 433. Certainly, the production or mining of gas is an intrastate or local business operation. Certainly then, the statement by the Court to the effect that plaintiff's business is one

of transporting natural gas by pipe line, in interstate commerce only, is not altogether borne out by the record.

Further, we submit, with respect, that it is only in transmitting gas across the state lines that appellee is engaged in interstate commerce. We submit that the mechanical power or energy generated, manufactured or produced by the 10 four cylinder 1000 horsepower internal combustion gas engines, which are bolted down to concrete and have a permanent situs in Louisiana, is also a local business, and intrastate in character, just as is the production or mining of gas, notwithstanding the fact that the mechanical energy or power may be transmitted and used to operate machines (compressors) that are used to produce gas and load it into a 20-inch main pipe line that ultimately carries part of the gas out of the State. The excise, license or privilege tax involved herein is on the local or intrastate business of manufacturing, generating or producing the mechanical energy or power, and is not levied on the use of the mechanical energy or power and can not be a direct burden on interstate commerce in the case at bar. This Honorable Court has repeatedly recognized the distinction between manufacture, generation or production and transportation, and ultimate uses of the product manufactured, generated or produced. Authorities recognizing these distinctions and supporting the view of the appellant expressed herein, are: *Oliver-Iron Mining Co. v. Lord*, 262 U. S. 172; *Hope Natural Gas Co. v. Hall*, 274 U. S. 284; *Cbe v. Errol*, 116 U. S. 517; *c/f Federal Compress Warehouse Co. v. McLean*, 291 U. S. 17; *Carson Petroleum Co. v. Vial*, 279 U. S. 95; *Schecter Poultry Corp. v. United States*, 295 U. S. 495.

**Point VII.****ERROR TO COMPARE GENERATION, PRODUCTION, OR MANUFACTURING OF MECHANICAL ENERGY IN CASE AT BAR BY ENGINES WITH PERMANENT SITUS IN LOUISIANA, TO LOCOMOTIVES PULLING INTER-STATE TRAIN.**

Counsel for appellee will probably urge in oral argument to this Honorable Court that to sustain the levy herein involved would be to say that a tax for the privilege of generating power in a locomotive pulling an interstate train would be valid. We submit, with respect, that such is not the case, and that the principles involved are easily distinguished. In the first place, Act 6 of 1932 levying the tax involved, in Section 3, specifically exempts the production, generation, or manufacture of any power which is used to propel any automobile, truck, tug, vessel or other self-propelled vehicles on land, water or air. Even if this exemption was not contained in the statute, any attempt by the State of Louisiana to levy an excise, license or privilege tax for the privilege of manufacturing, generating or producing mechanical energy, which is used to propel a locomotive pulling an interstate train through the State of Louisiana, would be a direct burden on interstate commerce.

The internal combustion gas engines in the case at bar are bolted down to concrete at the Munce plant and have a fixed and permanent situs in the State of Louisiana. They remain at this one place and, when operated, manufacture, generate or produce mechanical energy that is taken from this point of manufacture, production or gen-



eration to the point of use or consumption by means of transmission rods. The internal combustion gas engines do not form the part of any self-propelled vehicle, and the mechanical energy or power manufactured, generated or produced by that is comparable in every respect to the generation of electricity at a power plant having a permanent situs within the State. Certainly, an excise, license or privilege tax for the purpose of manufacturing, generating or producing electrical power at a local power plant would not be a direct burden on interstate commerce, even though the electrical energy or power thus manufactured, produced or generated is transmitted to and used by an electric train operating across state lines. We submit, with respect, that the attempted comparison of the internal combustion gas engines in the case at bar to the manufacture of mechanical energy on a locomotive pulling an interstate train is without merit.

#### **Point VIII.**

### **IN VIEW OF TESTIMONY AND EVIDENCE, ENGINES, TRANSMISSION RODS, AND COM- PRESSORS CANNOT BE CLASSIFIED AS A SINGLE UNIT.**

Appellee offered testimony to the effect that the internal combustion gas engines which produce or generate mechanical power by converting heat energy in gas into mechanical energy or power, the transmission rods which transmit the power or energy to the consuming units, (compressors), should be treated as one unit by the court, for the reason that, as asserted by a witness for appellee, the only purpose which the power or energy so manufactured, produced or generated could be used for is to operate the com-

pressor units at the Munce Station. Certainly, the Court cannot take such testimony seriously, in view of the vast preponderance of the testimony offered by expert witnesses on behalf of appellant which conclusively shows otherwise, (R. 77-121). The testimony offered by the appellant conclusively shows that the mechanical energy manufactured, produced or generated by the internal combustion gas engines at the Munce Station could be used for any purpose where mechanical energy is needed; that is, to operate pumps, compressors, or in fact any machinery requiring mechanical power, (R. 77-121). This mechanical power manufactured, produced or generated at the Munce Station could be transmitted by the use of rods or belting for great distances to the point of consumption. (R. 105-114).

#### **Point IX.**

#### **IF APPELLEE PURCHASED MECHANICAL ENERGY OR POWER MANUFACTURED IN LOUISIANA, PRODUCER WOULD BE ENGAGED IN LOCAL OR INTRASTATE OPERATION.**

For the sake of argument, assume that the appellee purchased the mechanical energy or power used to operate the compressors or consuming units. If this were true, the same situation would exist as exists in the case at bar, except that someone else would own the manufacturing, producing or generating units; that is, the internal combustion gas engines. The power or energy would be produced, manufactured or generated in the same manner and transmitted to the compressors or consuming units, in the same manner, except possibly the transmission rods would

be of greater length, as shown in the testimony of Mr. Gaudet, (R. 105-114): The production of the mechanical energy would be intrastate in character. It follows that where appellee elects to manufacture its own mechanical energy, it is engaged in a local operation.

**Point X.**

**IF APPELLEE PRODUCED MECHANICAL POWER OR ENERGY FOR SALE IN LOUISIANA, OPERATION WOULD BE LOCAL OR INTRASTATE.**

If the internal combustion gas engine units, situated at the Munce Station, and involved in the litigation at bar, were owned and operated by appellee for the purpose of manufacturing mechanical power or energy, and the mechanical power or energy so manufactured, generated or produced, was transmitted to distant points and sold to consumers, who use the power or energy to operate pumps, compressors, or similar mechanical or consuming units, certainly the business of appellee would be intrastate or local in character, even though the rods transmitting the power might extend across state lines. Appellee has elected, in the case at bar, to generate, manufacture or produce its own mechanical energy or power by the use of internal combustion gas engines at the Munce plant, and transmit it to the consuming units, the compressors, by means of the transmission rods. Certainly, this endeavor of appellee in manufacturing or generating its own mechanical energy or power and transmitting it to the consuming units; that is, the compressors, is intrastate business, just as much so as the manufacture or generating of electrical energy or power in the *Pfost* case, *supra*.

The manufacture, production and generation of the mechanical energy or power at the Munce Station by appellee is just as much intrastate business as would be the manufacture of piping or any other equipment that is ultimately used by appellee in its interstate business. There is no doubt but that appellee would be engaged in intrastate or local business if it elected to manufacture its own 20-inch piping there at the Munce Station. It is true the piping would be consumed or used in the furtherance of interstate transportation, but the manufacture of such materials or supplies would be intrastate in character and subject to state control and taxation.

#### **Point XI.**

### **MORE ECONOMICAL FOR APPELLEE TO OPERATE ENGINES AND COMPRESSORS IN CLOSE PROXIMITY.**

The testimony and evidence in the case at bar clearly show that the only reason the internal combustion gas engines, which manufacture, generate or produce mechanical power by converting the heat energy in natural gas into mechanical power, are directly connected to the compressor units by the rods of transmission, which transmit the mechanical energy from the producing or manufacturing units to the units of consumption, is that it has been found to be more economical to operate the machinery of manufacture, generation and production in close proximity to the consuming machinery; that is, the machinery that requires mechanical power or energy to do useful work, (R. 103-105).



The record further shows that, originally, the manufacturing, generating or producing unit was not operated in such close proximity to the machinery requiring mechanical energy, (R. 103-105). Before the manufacturing, generating and producing unit was made to operate in close proximity to the machinery of application, that is, the compressors, the mechanical energy, after its manufacture, generation or production by the internal combustion gas engines, was transmitted to the consuming unit, that is, the compressors, by means of a system of belting.

Photographs introduced in evidence in connection with the testimony of Mr. Gaudet, (R. 105-114), a mechanical engineer who qualified as an expert witness, show how mechanical energy is manufactured from the heat energy in gas and transmitted over long distances through a system of rods, similar to those in the case at bar, to the point of consumption, (R. 110-114).

#### **Point XII.**

#### **WRITTEN OPINION BY UNITED STATES CIRCUIT JUDGE JOSEPH C. HUTCHESON, JR., DISSENTING TO THE ISSUANCE OF A PRELIMINARY INJUNCTION IN CASE AT BAR.**

This case was argued before a United States District Court of three judges three times. The first time the case was up for argument on the question of whether or not a preliminary injunction should issue, it was argued before a three judge court composed of United States Circuit Judge Rufus E. Foster, and United States District

Judges Wayne G. Borah and Ben C. Dawkins. As a result of this hearing, the Court held Act No. 6 of 1932, involved herein, unconstitutional on several grounds, and further held that the tax involved was a direct burden on interstate commerce insofar as the Arkansas-Louisiana Pipe Line Company was concerned, (R. 14).

Appellant at this first hearing did not offer any testimony. Before this case was set for trial on the merits, an application for a rehearing was filed, based on a decision by the Supreme Court of Louisiana in the case of *State ex rel. Porterie, et al., v. H. L. Hunt, Incorporated*, 182 La., 107, 162 So. 777. (R. 18-19).

The application for a rehearing was granted, (R. 19). The case was then argued on rehearing on the question of whether or not a preliminary injunction should issue. The United States District Court of three judges, at this second hearing, was composed of United States Circuit Judge Joseph C. Hutcheson, Jr., United States District Judges Wayne G. Borah and Ben C. Dawkins. As the result of this hearing, United States Judges Wayne G. Borah and Ben C. Dawkins sustained the constitutionality of Act No. 6 of 1932, but held that the tax levied by the Act, insofar as the Arkansas-Louisiana Pipe Line Company is concerned, is a direct burden on interstate commerce, (R. 20).

Judge Hutcheson, however, in a written opinion, (R. 23), dissented from the ruling of the majority on the

question of the tax involved being a direct burden on interstate commerce.

Judge Hutcheson agreed with the State in his opinion, (R. 23), that the purpose of Act No. 6 of 1932, involved herein, is to levy a license tax for the privilege of producing power in the State of Louisiana. Judge Hutcheson's dissenting opinion is very short and to the point, and for the convenience of the Court, it is included in this brief.

#### "DISSENTING OPINION

"HUTCHESON, CIRCUIT JUDGE, dissenting:

"The primary purpose of the statute appears to have been to impose a license tax upon the production of power. It thus imposed not a property, but an excise or privilege tax. *Union Sulphur Co. v. Reid*, this day decided. *State ex rel Porterie v. Hunt*, 62 So. 777; *Bromley v. McCaughan*, 290 U. S. 124.

"The majority concludes that because the tax is a privilege, and not a property tax, and falls on the generation by complainant of power, used in part to gather gas in to, and in part to transport it through its transportation lines, it is a direct and undue burden on interstate commerce. I do not think so.

"The majority considers the tax a license tax upon the business or occupation of transporting gas in interstate commerce; that is, the business of purchasing gas in one state and selling it in another. I do not think so. If I could agree that the tax was occupational, levied on the general business of complainant, that of acquiring and conducting gas interstate, I could agree with the majority that the

case is ruled by *Cooney v. Mountain States T. & T. Co.*, 294 U. S. 384, and that the tax is invalid. I cannot, however, agree to this. I think it quite plain that the tax is not imposed on complainant as a license tax, for the general privilege of transacting its business. It is exacted as a specific privilege tax, for the privilege of generating power in the State. It does not at all fall upon or condition its privilege of conducting the business of transporting gas interstate.

"In the *Cooney* case this distinction is made clear. There is said 'There is no question that the State may require payment of the occupation tax from one engaged in both intrastate and interstate commerce.' c/f *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465, 'But a State cannot tax interstate commerce; it cannot lay a tax upon the business which constitutes such commerce, or the privilege of engaging in it.'

"The statute under attack here does not undertake to, it does not, lay a tax upon the business which constitutes interstate commerce, or the privilege of engaging in it. It exacts of complainant, who is engaged in both intra and interstate commerce, as well as of all others in the State of Louisiana similarly situated as to the use of prime movers, a privilege tax upon the generation of power in Louisiana. The uses of that power are not taxed. The business in which the power is generated is not taxed. The generation of the power, and that alone, is taxed. The measure of it, is the horse power capacity of the 'prime movers' employed to generate it.

"The majority regards as inapplicable *Utah Power & Light Co. v. Pfof*, 286 U. S. 165. I think that case controlling. There the generation of electrical energy which was the subject of the tax was followed immediately by its transmission to other



states. Here, as there, the tax is upon the production of energy. Here, as there, that production is taxable, for here, as there, the tax is laid on the manufacture or production of energy, and not on its transfer or conveyance to distant states. Here, as there, the tax is laid upon the generation of power as a distinct act of production, and without regard to its subsequent use. Here, as there, so far as complainant produces energy in Louisiana, its business is purely intrastate, subject to State taxation and control. It is only in transmitting as across the State lines by the use of this power that defendant is engaged in interstate commerce.

"Other cases supporting this view are, *Oliver-Iron Mining Co. vs. Lord*, 262 U. S. 172; *Hope Natural Gas Co. vs. Hall*, 274 U. S. 284; *Coe vs. Errol*, 116 U. S. 517; c/f *Federal Compress Warehouse Co. vs. McLean*, 291 U. S. 17; *Carson Petroleum Co. vs. Vial*, 279 U. S. 95; *Schechter Poultry Corp. vs. United States*, 295 U. S. 495.

"I am also of the opinion that defendant is right in its contention that if the tax may be held to be on interstate commerce, it falls on it not directly, but indirectly and therefore does not violate the Commerce Clause. *Port Richmond vs. Board of Chosen Freeholders*, 232 U. S. 317; *Wiggins Ferry Co. v. East St. Louis*, 170 U. S. 365; *State vs. Albert Mackie*, 144 La. 339; *Krauss Lumber Co. vs. Board of Assessors*, 148 La. 1057; *Baltic Mining Co. vs. Massachusetts*, 231 U. S. 68; *Hump Hairpin Mfg. Co. vs. Emerson*, 258 U. S. 290.

"When a tax is as here levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that 'it is clear that it is not imposed with the covert purpose, or with the effect to defeat constitutional rights,' *Hump Hairpin Mfg. Co. vs. Emerson*, *supra*,

it is not a prohibited burden on interstate commerce. It is a valid exercise of the power of the State to tax.

"With respect, therefore, I dissent."

Judge Hutcheson was evidently so firmly of the opinion that the State's position in the case at bar is correct, he held that the Arkansas-Louisiana Pipe Line Company, appellee herein, was not even entitled to a preliminary injunction.

The case was argued for the third time before a United States District Court of three judges on February 12, 1937. The three-judge court hearing the case the third time, and this time on the question of whether or not the preliminary injunction issued should be made permanent, was composed of United States Circuit Judge Rufus E. Foster, and United States District Judges Wayne G. Borah and Ben C. Dawkins. On May 24, 1937 (R. 124), the three-judge court rendered a decision granting a permanent injunction, enjoining the State from collecting the taxes alleged to be due by the Arkansas-Louisiana Pipe Line Company.

Stress is laid upon the opinion of Judge Hutcheson, set out herein, and it is, with the greatest respect, urged that the Court give this opinion of Judge Hutcheson's very careful consideration for the reason that we submit, with respect, the testimony and evidence offered by the State, and even the findings of fact of the three-judge court making the injunction permanent, conclusively show that the opinion rendered by Judge Hutcheson is fully substantiated by the facts in the record and the law.

**Point XIII.**

**EVEN IF THE COURT SHOULD HOLD THE COMPRESSORS, THE TRANSMISSION RODS, AND THE INTERNAL COMBUSTION GAS ENGINES ARE ALL INSTRUMENTALITIES OF INTERSTATE COMMERCE, THE TAX LEVIED BY SECTION 3 OF ACT 6 OF 1932 IS NOT A DIRECT BURDEN ON INTERSTATE COMMERCE BUT IS INDIRECT AND, THEREFORE, IS NOT IN VIOLATION OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.**

Section 3 of Act 6 of 1932 levies an excise, license or privilege tax. *State v. Hunt, supra*. It is levied on the person, firm, corporation or association of persons for the privilege of generating, manufacturing or producing electrical or mechanical power by the use of prime movers. The measure of the tax is the rated horsepower capacity of the prime movers (internal combustion gas engines). There is no tax levied on the prime movers. The prime movers, or internal combustion gas engines, are all bolted down to concrete at the Munce Station and have a permanent situs in the State of Louisiana.

The case of *Wiggins Ferry Co. v. City of East St. Louis*, 2 S. Ct. Rep. 257, 267, involved the following proposition: The Legislature of Illinois authorized Samuel Wiggins to establish a ferry upon the waters of the Mississippi River from East St. Louis, Illinois to St. Louis, Missouri. The City of East St. Louis, Illinois, levied an occupational license tax on persons engaged in various oc-

cupations and included in the list of occupations was the operation of a ferry, with the tax measured by the number of boats used in the ferry service. Wiggins was a resident of East St. Louis, Illinois. The property used in his business was situated in East St. Louis, Illinois, and the boats used in his business were kept in East St. Louis, Illinois. The tax ordinance was attacked on the ground that the tax involved was a direct, therefore unlawful, burden on interstate commerce, Wiggins being engaged exclusively in the transportation of passengers and freight from one state to another.

This Court upheld the tax stating that the tax did not interfere with interstate commerce; that the tax was on the individual and was simply measured by the number of boats used in the business.

In the course of the opinion, this Honorable Court, said:

"The next question presented by the assignments of error relates to the power of the state to impose a license fee either directly or through one of its municipal corporations upon the keepers of ferries living in the state, for boats owned by them and used in ferrying passengers and goods from a landing in the state, across a navigable river, to a landing in another state. It is insisted by the plaintiff in error that such an exaction is forbidden by the constitution of the United States, (1) because it is a regulation of commerce between the states and therefore, within the exclusive power of congress; and (2) because it is a duty of tonnage, which the states are forbidden by the constitution to lay without the consent of congress.

"In our opinion neither of these contentions is well founded. The levying of a tax upon vessels or other



water-craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the constitution of the United States. *Gibbons v. Ogden*, 9 Wheat. 1; *The Passenger Cases*, 7 How. 283; *Morgan v. Parham*, 16 Wall. 471. In *Gibbons v. Ogden* it was settled that the clause of the constitution conferring on congress the power to tax, and the clause regulating and restraining taxation, are separate and distinct from the clause granting the power to congress to regulate commerce. In all of the cases just cited the right of a state to tax a ship owned by one of her citizens and having its situs within the state, although used in foreign commerce or in commerce between the states, was distinctly recognized. Thus, in *The Passenger Cases*, it was said by Mr. Justice McLean:

“ ‘A state cannot regulate foreign commerce, but it may do many things which more or less affect it. It may tax a ship or other vessel used in commerce the same as other property owned by its citizens. A state may tax the stages in which the mail is transported, but this does not regulate the conveyance of the mail any more than taxing a ship regulates commerce; and yet, in both instances, the tax on the property in some degree affects its use.’

“In the first place, the license fee is levied, not on the ferry boat, but on the ferry-keeper. The first section of the ordinance declares that no person shall carry on any trade, business, calling, or profession thereafter mentioned without having first obtained a license therefor, and the ordinance, after having enumerated many other trades and callings, and fixed the license fee for carrying them on, declares, in section 10, that keepers of ferries shall pay \$100 license fee for each boat plying between the city and the opposite bank of the river.

"Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists. The license fee exacted is, in effect, laid upon the business of keeping a ferry, for it is not laid upon all boats owned by the ferry-keeper, but only on those plying between the two banks of the river, and is graduated by the number of boats used by him."

In the case of *Port of Richmond & B. P. F. Company v. Board of Freeholders*, 34 S. Ct. 821, 234 U. S. 317, the Supreme Court of the United States, in discussing the case of *Wiggins Ferry Company v. East St. Louis*, *supra*, said:

"These cases were cited with approval in *Wiggins Ferry Company v. East St. Louis*, 107 U. S. 365, 27 L. ed. 419, 2 Sup. Ct. Rep. 257. There, the ferry company was an Illinois corporation and held a franchise granted by the legislature of that state for the operation of a ferry from East St. Louis, Illinois to St. Louis, Missouri. The payment of a license tax imposed upon the company in Illinois, for the privilege of conducting the ferry, was resisted under the commerce clause, but the contention was overruled, the court holding that 'the levying of a tax upon vessels or other water-craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution. (*Id.* p. 373).

"It is manifest, however, that the transportation of persons and property from one state to another is none the less interstate commerce because conducted by ferry; and it is not open to question that ferries maintained for that purpose are subject to the regulating power of Congress. It necessarily follows that whatever may properly be regarded as a direct burden upon interstate commerce, as conducted by ferries operating between states, it is beyond the

competency of the states to impose. This was definitely decided in *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 29 L. ed. 158, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826. The commonwealth of Pennsylvania had imposed a tax upon the ferry company, based upon the estimated value of its capital stock, upon the ground that it was doing business within the state.

"The company was incorporated in New Jersey and maintained a ferry from Gloucester, in that State, to Philadelphia. Save for the wharf that it leased at the latter place, its property, including its boats, had its situs in New Jersey; and its entire business consisted in ferrying. The tax upon the 'receiving and landing of passengers and freight at the wharf in Philadelphia,' which was a necessary incident to the transportation across the Delaware river, was a tax upon that transportation; and in this view the tax was held to be void as one laid upon interstate commerce."

The *Wiggins Ferry Company* case, *supra*, was also referred to by the Supreme Court in the case of *Postal Telegraph Cable Company v. City Council*, 14 S. Ct. 1094, 153 U. S. 692. In this case the Supreme Court interpreted the *Wiggins* case, and in so doing, said:

"In *Wiggins Ferry Company v. City of East St. Louis*, 107 U. S. 376, 2 Sup. Ct. 257, where a ferry company, authorized by an act of assembly of the state of Illinois to carry on its business, and paying state taxes prescribed in its charter, was called upon by a city ordinance to pay a license tax, it was held by this court that the exaction of a license fee is an ordinary exercise of police power by municipal corporations; that the power of the state to authorize any city within its limits to enforce a license tax on trades or callings generally, especially those which are quasi public, cannot be disputed; and

that whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists."

In the case of *Covington & C. Bridge Company v. Commonwealth*, 14 S. Ct. 1087, 154 U. S. 204, the United States Supreme Court again interpreted the jurisprudence established by the *Wiggins* case, as follows:

"So, too, in *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365, 2 Sup. Ct. 257, it was held that a state had the power to impose a license fee, either directly or through one of its municipal corporations, upon ferry keepers living in the state, for boats which they owned and used in conveying from a landing in the state, passengers and goods across a navigable river to another state. It was said that 'the levying of a tax upon vessels or other water craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the constitution of the United States.'"

If the court should hold that the Prime Movers located at Sterlington, Louisiana, are instrumentalities of interstate commerce, which is denied, then it is seriously urged that the jurisprudence established by the *Wiggins* case, and all the cases cited in this brief wherein the jurisprudence established by the *Wiggins* case is approved, and other cases, conclusively show that the excise, license or privilege tax levied by Section 3 of Act 6 of 1932 is not, under the established jurisprudence of the Supreme Court of the United States, a direct burden on interstate commerce within the meaning of the commerce clause in the Federal Constitution. In the *Wiggins Ferry Case*, *supra*, the rate of tax or the measure of the tax was the number



of ferry boats used in transporting passengers from East St. Louis, in the State of Illinois, to the City of St. Louis, in the State of Missouri. The court held that the ferries had a situs in East St. Louis. In the case at bar the Prime Movers certainly have a situs in Louisiana. They are bolted down to concrete foundations.

Further, as was the tax in the *Wiggins* case, the tax involved in the case at bar is constant and fixed. It is a tax levied on persons, firms, corporations and associations of persons for the privilege of generating power, and is at a fixed rate per horsepower capacity of the equipment and does not fluctuate with the amount of operation. In other words, if the internal combustion gas engines are operated one day or three hundred and sixty-five days, the tax remains the same. Increased use does not increase the tax.

In the case of *State v. Albert Mackie Co.*, 144 La. 339, the Supreme Court of Louisiana exhaustively reviewed decisions of the Supreme Court of the United States wherein the question of what involved the direct burden on interstate commerce was discussed. Justice O'Niell, the organ of the court, in construing the jurisprudence established by the Supreme Court of the United States, as to what constitutes a direct burden on interstate commerce, said:

"*Nathan v. Louisiana*, 8 How. (49 U. S.) 73, 12 L. Ed. 992, is authority for the proposition that a state is not prohibited from levying a license tax upon a business or occupation such as that of a money or exchange broker, merely because the broker is engaged in selling only foreign bills of exchange. The license tax in that case was not graduated or measured by the volume of business

done, but was a fixed tax upon every such business or occupation; hence, if it affected foreign commerce at all, it did so only incidentally, not directly. It is well settled that a state tax that affects interstate or foreign commerce only incidentally and not directly, as, for example, a tax upon property that is used in such commerce, or a tax upon net incomes or profits that have been derived from such commerce, or a fixed tax levied upon a local business without discriminating against interstate business, is not repugnant to the commerce clause of the federal Constitution (article 1, Sec. 8). The important feature of the case before us that distinguishes it from the case cited is that the tax in question is graduated or measured, in part, by the volume of interstate and foreign business done, and is therefore a direct interference with, or regulation of, that commerce. The mandate in the state Constitution now prevailing, to graduate license taxes, does not and could not require an interference with interstate or foreign commerce.

"In the case of *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, 12 Sup. Ct. 121, 35 L. Ed. 994, the tax in question was an annual excise tax imposed upon every railroad company for the privilege of exercising its franchise within the state. The tax was graduated or measured according to the gross transportation receipts of the railroad within the state. But, with regard to railroads extending beyond the state line, the gross receipts of the railroad operated within the state were ascertained or estimated by multiplying the number of miles of road within the state by the average gross receipts per mile of the entire road extending within and without the State. That was not a tax upon the interstate transportation receipts. It was not even regulated or graduated or measured in proportion to the receipts from interstate transportation; be-

cause the average of receipts per mile of road extending beyond the state might have been more or less than the average receipts per mile of road within the state, without affecting the average receipts per mile of the entire road, which latter average was adopted merely as an estimate of, and was perhaps the only means of estimating the average receipts per mile of road within the state. The tax, therefore, was not a burden upon, or a regulation of, the transportation business done outside of or beyond the state.

"In *Ficklen v. Taxing District*, 145 U. S. 1, 12 Sup. Ct. 810, 36 L. Ed. 601, the license tax in contest, levied upon all factors or brokers for doing a local business, was not graduated on gross sales or receipts, but was a fixed tax of \$50 per annum, plus an ad valorem tax of 10 cents on every \$100 of capital invested or used in the business, provided that, where there was no capital invested, a charge of  $2\frac{1}{2}$  per cent. was levied on the gross yearly commissions, charges, or compensations. The fixed tax was not a direct burden upon any interstate commerce done by a factor or broker, nor was the ad valorem tax on capital located in the taxing district invalid. And the decision that the tax of  $2\frac{1}{2}\%$  on the gross yearly commissions, charges, or compensations was valid might be justified on the ground that the commissions, charges, or compensations received by the factor or broker was his net earnings or profits.

"In *United States Glue Co. v. Town of Oak Creek*, 247 U. S. 321, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748, the tax in contest was levied upon the net income or profits earned by the corporation, not upon its gross receipts; and the ruling was that the tax was not invalid, as an interference with interstate commerce, to the extent that the net income or profits was earned in interstate commerce. The net income or profit earned by a

person is his property, and a tax upon it, graduated in proportion to its value, is not a direct burden upon—because it has little or no deterring effect upon—the business or commerce from which the net income or profit is derived. The distinction between a direct burden upon commerce, such as results from a tax that is graduated in proportion to the gross receipts of a business, and an indirect burden, such as results from a tax that is graduated in proportion to the net income or profits of a business, was drawn very clearly in the discussion of the subject in the case last referred to. Tested by the rule there furnished, the tax in contest here, in so far as it is imposed upon or measured by the gross receipts from sales made in interstate or foreign commerce, is a direct burden upon the commerce, and is therefore to that extent invalid.”

It will be observed that, under the jurisprudence reviewed by the Louisiana Supreme Court, as established by the United States Supreme Court, to be a burden on interstate commerce, a tax must be increased by the volume of the interstate commerce. This seems to be well established. In the case at bar the tax is constant, fixed and does not fluctuate with the amount of commerce done. The levy under Act 6 of 1932 is the same irrespective of the volume or flow of interstate commerce.

In the case of *Krauss Brothers Lumber Company v. Board of Assessors*, 148 La. 1057, the Supreme Court of Louisiana, in further discussing this same question, said:

“Appellant relies also upon the decision of the United States Supreme Court maintaining the general doctrine that a state tax which, in effect, regulates or interferes with interstate commerce is a violation



of the commerce clause of the Constitution of the United States, no matter what name the tax may bear or what was the purpose of its being imposed. In support of the doctrine last stated, appellant relies particularly upon the rulings in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; *Looney v. Crane*, 245 U. S. 178, 38 Sup. Ct. 85, 62 L. Ed. 230; *Crew-Levick v. Pennsylvania*, 245 U. S. 292, 38 Sup. Ct. 126, 62 L. Ed. 295; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 38 Sup. Ct. 292, 62 L. Ed. 624, Ann. Cas. 1918C, 617; and *United States Glue Co. v. Town of Oak Creek*, 247 U. S. 321, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748.

"All of the decisions by the United States Supreme Court cited above were reviewed and analyzed in the opinion rendered by this court in *State v. Albert Mackie Co.*, 144 La. 339, 80 South. 582, where it was held that a license tax imposed upon a local business and graduated according to the amount of the gross sales could not be sustained as to sales made in interstate commerce. An examination of the decisions referred to, however, disclosed that, in every case in which the state tax was declared violative of the commerce clause, it was graduated and dependent upon the volume of interstate business done. In fact, the question whether the amount of the tax varies in proportion to the volume of interstate business seems to be the only test as to whether the tax is a direct burden upon interstate commerce. A state tax that is not a direct burden upon interstate commerce does not conflict with the commerce clause of the Constitution of the United States. To illustrate: A state tax upon net profits resulting from interstate commerce, being in reality a tax upon the property of the proprietor of the business, is not a direct burden upon the interstate commerce. Of course, a state license tax graduated according to gross sales in interstate commerce and varying ac-

according to the volume of business done is a direct burden upon interstate commerce. But the fact that property belongs to a corporation engaged in interstate commerce does not deprive the state in which the property is situated of the right to impose an ad valorem tax upon the property, provided the tax be not regulated or graduated according to the volume of interstate business done; and it makes no difference, in that respect, whether the corporation owning the property be a domestic or foreign corporation. The distinction between a direct or immediate burden and an indirect or incidental burden upon interstate commerce is drawn clearly in the case of *United States Glue Co. v. Town of Oak Creek*, *supra*, viz.:

"The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss or to so diminish the profit as to impede or discourage the conduct of the commerce. A tax upon the net profits has not the same deterrent effect, since it does not arise at all unless a gain is shown over and above expenses and losses, and the tax cannot be heavy unless the profits are large. Such a tax, when imposed upon net incomes from whatever source arising, is but a method of distributing the cost of government, like a tax upon property, or upon franchises treated as property; and if there be no discrimination against interstate commerce, either in the admeasurement of the tax or in the means adopt-

ed for enforcing it, it constitutes one of the ordinary and general burdens of government, from which persons and corporations otherwise subject to the jurisdiction of the states are not exempted by the federal Constitution because they happen to be engaged in commerce among the states.' ”

In the case of *Baltic Mining Co. v. Massachusetts*, 84 S. Ct. 15, 231 U. S. 68, the Supreme Court of the United States, in discussing what constitutes a direct burden on interstate commerce, within the meaning of the constitutional prohibition, said:

“While this is true, other equally well-established principles must be borne in mind in considering the validity of a state tax attacked upon grounds of unconstitutionality. The mere fact that a corporation is engaged in interstate commerce does not exempt its property from state taxation. *United States Exp. Co. v. Minnesota*, 223 U. S. 335, 344, 56 L. Ed. 459, 464, 32 Sup. Ct. Rep. 211. It is the commerce itself which must not be burdened by state exactions which interfere with the exclusive Federal authority over it. A resort to the receipts of property or capital employed in part, at least, in interstate commerce, when such receipts or capital are not taxed as such, but are taken as a mere measure of a tax of lawful authority within the state has been sustained. *Maine v. Grand Trunk R. Co.*, 142 U. S. 217, 35 L. Ed. 994, *Inters. Com. Rep.* 807, 12 Sup. Ct. Rep. 121, 163; *Provident Inst. v. Massachusetts*, Wall. 611, 18 L. Ed. 907; *Hamilton Mfg. Co. v. Massachusetts*, 6 Wall. 632, 18 L. Ed. 904; *Flint v. Stone*, *Tracy Co.*, 220 U. S. 107, 162-165, 55 L. ed. 389, 417-419, 31 Sup. Ct. Rep. 342, *Ann. Cas.* 1912 B. 1312; *United States Exp. Co. v. Minnesota*, *supra*.”

The Supreme Court of the United States in *Hump Hairpin Mfg. Co. v. Emmerson*, 42 S. Ct. 305; 258 U. S.

290, upheld an occupational license tax levied by the State of West Virginia where the proceeds derived from interstate commerce were used in part, to arrive at the amount of tax due. The Supreme Court, in passing on the case, said:

"While a state may not use its taxing power to regulate or burden interstate commerce (*United States Express Co. v. Minnesota*, 223 U. S. 335, 32 Sup. Ct. 211, 56 L. Ed. 459; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 38 Sup. Ct. 292, 62 L. Ed. 624, Ann. Cas. 1918C, 617), on the other hand it is settled that a state excise tax which affects such commerce, not directly, but only incidentally and remotely, may be entirely valid where it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights. As coming within this latter description, taxes have been repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining the amount of a fund (not wholly derived from such commerce) to be assessed, that the principles of the cases so holding must be regarded as a settled exception to the general rule. *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, 12 Sup. Ct. 121, 35 L. Ed. 994; *Wisconsin & Michigan Railway Co. v. Powers*, 191 U. S. 379, 24 Sup. Ct. 107, 48 L. Ed. 229; *Flint v. Stone Tracy Co.*, 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312; *United States Express Co. v. Minnesota*, 223 U. S. 335, 343, 32 Sup. Ct. 211, 56 L. Ed. 459; *Baltic Mining Co. v. Commonwealth of Massachusetts*, 231 U. S. 68, 34 Sup. Ct. 15, 58 L. Ed. 127; *Kansas City, &c., R. R. Co. v. Stiles*, 242 U. S. 111, 37 Sup. Ct. 58, 61 L. Ed. 176; *U. S. Glue Co. v. Oak Creek*, 247 U. S. 321, 326, 327, 38 Sup. Ct. 499, 62 L. Ed. 1135, Ann. Cas. 1918E, 748. The turning point of these decisions is whether in its incidence the tax affects interstate commerce so directly and immediately as



to amount to a genuine and substantial regulation of, or restraint upon it, or whether it affects it only incidentally or remotely, so that the tax is not in reality a burden, although in form it may touch and in fact distantly affect it.

"No formula has yet been devised by which it can be determined in all cases whether or not such a tax is valid, and applying the repeated declaration of this court, in the cases cited and in many others, that the question is inherently a practical one, depending for its decision on the special facts of each case, we are clear that the tax here involved falls within the excepted class described, even though the business done with residents of states other than Illinois be regarded as interstate."

#### **Point XIV.**

#### **GAS IS NOT MOVING IN INTERSTATE COMMERCE UNTIL ACTUALLY DELIVERED AND LOADED INTO 20-INCH MAIN PIPE LINE.**

Exhibit "B" (R. 92), introduced by appellant, shows the field gathering lines owned and operated by appellee, and the terminus of the field gathering lines owned by other companies which produce gas and collect and gather the gas from the fields and take it to a central point on the edge of the area of production, and there sell it to appellee. The gas is gathered from the field by a system of small lines interwoven throughout the producing areas, and is brought to a central point on the edge of the area of production.

Appellee's compressors assist in the production of the gas. When the gas reaches the Munce Station it con-

tains impurities, such as water and natural gasoline, which makes the gas unfit for consumption and unmerchantable. The testimony (R. 119), shows that the superintendent of the Munce Station stated to witnesses for appellant that the gas purchased by appellee, delivered to it at its Munce Station, and also the gas produced by appellee, is unmerchantable gas at the time it reaches the Munce Station, and that through a system of scrubbers, separators, headers and other apparatus, the gas is treated and its physical properties changed so as to change it from unmerchantable gas to merchantable gas. This constitutes a manufacturing process. After the gas is gathered and made merchantable, it is loaded into the 20-inch main pipe line at the Munce Station by aid of the compressors. The gas is measured by meters at the point of intake at the said 20-inch main pipe line for the purpose of telling the amount of gas that is delivered into it.

We submit, therefore, with respect, for the reasons stated above, that the gas involved does not move in interstate commerce until it is physically and actually within the confines of the 20-inch main pipe line, beginning at the Munce Station; that the gathering of the gas from the wells in the Ouachita and Richland fields through the gathering system is part of the production, and the transportation of the gas through this local field gathering system to a central point at the edge, or near the edge of the field, is essentially intrastate business.

This Honorable Court, in the case of *Commonwealth of Pennsylvania v. State of West Virginia*, 262 U. S. 553, 43 S. Ct. 658, said that natural gas, after it is produced, becomes a subject to commerce like any other product of the forest, field or mine. In view of this language, it would seem the same rules should apply to natural gas that apply to other natural resources as to the time the product enters interstate commerce.

This Honorable Court, many times, has held that a product does not enter interstate commerce until it actually begins its interstate journey. *Coe v. Town of Errol*, 6 S. Ct. 475, 116 U. S. 517.

The fact that a natural resource is mined with the intent of being shipped out of the state does not put the product in interstate commerce until it actually begins the interstate shipment. *U. S. v. E. C. Knight Company, et al.*, 15 S. Ct. 249, 156 U. S. 1.

In the case of *Oliver Iron Mining Company v. Lord*, 43 S. Ct. 526, 262 U. S. 172, this Court sustained an occupational license tax levied by the State of Minnesota on the business of mining. In that case, empty railroad cars were run to the open pit mines from adjacent railroad yards where they were loaded. When loaded, the cars were promptly returned to the railroad yards where they were put into trains. There was a continuity of movement from the time the ore was severed until it began its interstate journey. In upholding the tax, this Court said:

"\* \* \* When loaded the cars are promptly returned to the railroad yards, where they are put

into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. \* \* \*

In the case of *McCluskey v. Marysville & N. R. Co.*, 37 S. Ct. 374, 243 U. S. 36, in discussing the point at which products or commodities enter interstate commerce, this Honorable Court, speaking through Chief Justice White, quoted with approval from the case of *Railroad Commission v. Worthington*, 225 U. S. 101, 56 L. Ed. 1004, 32 S. Ct. Rep. 653, as follows:

“In the case at bar there was no initial shipment of the goods. The transportation of the poles from the forest in which they were cut to tidewater, where they were sold, was not a shipment. There was no contract of carriage; there was no bill of lading; there was no consignor or consignee. The goods were not committed to a carrier. The defendant Mill Company simply carried over its own road, on its own cars, its own goods, to a market where it sold and delivered them. It had no concern with the subsequent disposition of them. It was under no obligation to deliver them to another carrier, and no other carrier was under obligation to receive them or carry them further. The selling of the poles after the first sale by the Mill Company, or whether they were going outside of the state, depended upon chance or the exigencies of trade. The movement of the poles did not become interstate commerce until, by the act of the purchasers thereof, the poles were started on their way to their destination in another state or country. The beginning of the transit which constitutes interstate commerce is defined in *Coe v. Errol* to be the point of time that



an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage.' ”

It would certainly seem that, under the authority quoted above, the gas in the case at bar did not enter interstate commerce until it was actually and physically within the 20-inch main pipe line.

In the case of *Diamond Match Company v. Ontonagon*, 23 S. Ct. 266, 188 U. S. 82, this Honorable Court quoted with approval part of the decision in the case of *The Daniel Ball v. United States*, 19 L. Ed. 1002, as follows:

“ ‘Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.’ ”

and further stated,

“But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of that journey.”

Many other authorities could be cited to show that the gas involved did not enter interstate commerce until after it has been gathered from the field or place of production through the small field gathering lines where the pressure is low, and is carried to a central point on the edge of production, where it is changed from an unmerchantable product to a merchantable product, as explained

in this brief and in the evidence, and after all these operations the gas is then compressed and loaded into the 20-inch main pipe line. It is only after it has been physically placed within the main pipe line that the gas that goes out of the state begins its interstate journey.

**Point XV.**

**IF THE COURT SHOULD HOLD THAT THE GAS INVOLVED IS IN INTERSTATE COMMERCE PRIOR TO TIME IT IS WITHIN TWENTY INCH MAIN PIPELINE THEN ONLY THE COMPRESSORS COULD BE INSTRUMENTALITIES OF INTERSTATE COMMERCE.**

The evidence and testimony in this case conclusively show the compressor is a machine complete within itself and is separate and distinct of the other issues involved in the case at bar, that is, the engines produce mechanical energy and the transmission rods, and even if the Court should hold that the gas in the case at bar is in interstate commerce prior to the time it is delivered into the twenty-inch main pipeline, then only could the compressor be an instrumentality of interstate commerce and the excise, license or privilege tax on the person for the privilege of engaging in the intrastate business of manufacturing, producing or generating mechanical power, could not be a direct burden on interstate commerce even if appellee elects to use said mechanical energy or power to operate said compressors.

**Point XVI.**

**IN THE ALTERNATIVE, EVEN IF TAX ON APPELLEE FOR PRIVILEGE OF OPERATING TEN PRIME MOVERS TO PRODUCE MECHANICAL ENERGY, WHICH ENERGY IS USED TO OPERATE COMPRESSORS IS A DIRECT BURDEN ON INTERSTATE COMMERCE, WHICH IS DENIED BY APPELLANT, THE TAX ON APPELLEE FOR PRIVILEGE OF MANUFACTURING MECHANICAL ENERGY BY USING TWO 250 HORSEPOWER ENGINES TO PRODUCE MECHANICAL ENERGY TO OPERATE ELECTRIC GENERATORS IS NOT A DIRECT BURDEN.**

In the alternative, even if the Court should hold that the specific tax levied by Act 6 of 1932 on the appellee for the privilege of generating, manufacturing or producing mechanical energy by use of the 10 four cylinder internal combustion gas engines in Louisiana is a direct burden on interstate commerce, which is denied by appellant, then it is urged that the excise, license and privilege tax levied on appellee for the privilege of manufacturing, generating or producing mechanical energy by means of the two 250 horsepower internal combustion gas engines is not a direct burden on interstate commerce and could not be for the reason that said mechanical energy is transmitted and used to propel electric generators, which generators convert the mechanical energy into electrical energy, which electrical energy is used to light the buildings at the Munce Station, and to operate machine shops and air compressors, all of which is wholly intrastate and local in character.

## SUMMARY AND CONCLUSION.

We respectfully submit that the preceding argument fully supports, and indeed requires, the following conclusions:

- First:* That the Arkansas-Louisiana Pipe Line Company, appellee herein, is engaged in the business in Louisiana of manufacturing, generating or producing mechanical energy by converting the heat energy in natural gas into mechanical energy or power by means of ten 4 cylinder 1000 horsepower internal combustion gas engines, and two 250 horsepower internal combustion gas engines.
- Second:* That the mechanical energy or power, after its manufacture, production or generation, is transmitted by rods to compressors.
- Third:* That the compressors, or machinery of application, require mechanical power for their operation, and that the mechanical power or energy manufactured, produced or generated by ten of the internal combustion gas engines in the manner above mentioned, is transmitted to and used or consumed to operate said compressors; that there is a definite distinction between (a) manufacture, generation or production, and (b) transmission, and (c) consumption or use of mechanical energy or power.
- Fourth:* That the manufacture, production or generation of mechanical energy by appellee, by use of



the engines described above, which are bolted down to concrete and have their permanent situs in Louisiana, is a local and intrastate operation.

- Fifth:* That the mechanical energy or power manufactured, produced or generated is capable of transmission over long distances to the point of use, just as electrical energy is capable of transmission to the point of use.
- Sixth:* That the tax involved herein is not a direct burden on interstate commerce.
- Seventh:* That if any machinery involved herein is an instrumentality of interstate commerce, it is and can only be the compressors used to produce, gather and deliver the gas into the twenty-inch main pipeline.
- Eighth:* That the two 250 horsepower internal combustion gas engines used to manufacture, generate or produce mechanical energy or power that is transmitted and used to operate generators that produce, or generate electrical energy that is used to light buildings at the Munce Plant, operate air compressors (not the ten compressors used to produce, gather and load the gas into the twenty-inch main pipeline), and to operate the machine shops at the Munce Plant, are engaged in a local and intrastate operation, and are not instrumentalities of interstate commerce.
- Ninth:* In the alternative, if the Court should hold the internal combustion gas engines, the transmis-

sion rods and the compressors are instrumentalities of interstate commerce, which is denied, then the tax is not a direct burden on interstate commerce, but is indirect, and, therefore, is not unconstitutional.

*Tenth:* That the gas that eventually goes out of the State, involved in the case at bar does not enter interstate commerce until it is actually and physically within the twenty-inch main pipeline.

We submit:

That, for the reasons set forth above, the decree of the lower Court should be reversed and the permanent injunction issued herein recalled and set aside, and that the tax levied by Act 6 of 1932 should be decreed not to be a direct burden on interstate commerce in the case at bar.

Respectfully,

GASTON L. PORTERIE,  
Attorney General of Louisiana;  
J. C. DASPIT,  
Assistant Attorney General;  
F. A. BLANCHE,  
Assistant Attorney General;  
E. LELAND RICHARDSON,  
Assistant Attorney General.

**ADDENDA**

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STATE OF LOUISIANA

ACT NO. 6 OF 1932

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ELECTRIC POWER TAX

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EFFECTIVE DATE, AUGUST 1, 1932

FIRST REPORT DUE AUGUST 1, 1933

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SUPERVISOR OF PUBLIC ACCOUNTS

Baton Rouge, La.

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## ACT NO. 6 OF REGULAR SESSION OF 1932

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Effective August 1, 1932

First Report Due August 1, 1933

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### ACT No. 6

House Bill No. 286.

By Mr. Lee

#### AN ACT

To raise additional revenue for the State of Louisiana by levying an excise, license or privilege tax on persons, firms, corporations and associations of persons engaged in the business of manufacturing or generating or selling electricity for heat, light, or power, in the State of Louisiana and on persons, firms, corporations and associations of persons engaged in certain other businesses or occupations using electrical or mechanical power produced by such persons, firms, corporations or associations of persons; providing for the keeping and maintaining of necessary records and instruments for computing the tax hereby imposed; providing penalties for the failure or omission to keep the required instruments and records; providing for the enforcement of this Act by the Supervisor of Public Accounts; providing penalties for the failure to make true and correct returns hereunder; providing for the seizure and sale of the tax debtor's property in case of failure to pay the said taxes; providing that any person intentionally furnishing false information or making false oath under this Act shall be guilty of perjury; providing that all monies collected under this Act shall be paid into the General Fund; providing that Twenty-five Thousand

(\$25,000.00) Dollars per annum shall be deducted from the funds collected under this Act for the enforcement thereof; providing that if any clause, sentence, paragraph, section or any part of this Act be adjudged invalid, such judgment shall not affect or impair or invalidate the remainder of this Act; providing that the tax levied by this Act shall become effective August 1st, 1932; prohibiting any municipality, parish or other sub-division of the State of Louisiana from repeating or duplicating in whole or in part the tax hereby imposed; and repealing all laws or parts of laws inconsistent or in conflict herewith.

Levying annual license or privilege tax on electricity generating plants.

Section 1. Be it enacted by the Legislature of Louisiana, that, in addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent per annum of the gross receipts from the sale of the electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided.

Levying annual tax for sale of electricity.

Section 2. In addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power in the State of Louisiana, shall be subject to the payment of an excise,

license or privilege tax of two per cent. per annum of the gross receipts from the sale of such electricity, not manufactured or generated by him or it sold in the State of Louisiana, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided; provided that if any person, firm, corporation or association of persons, the principal use of whose electric facilities is the generation of electricity for sale, shall furnish any electricity for heat, light or power, to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, the fair value of the electricity furnished to such branch shall be included in the gross receipts of such person, firm, corporation or association of persons for the purpose of computing the tax hereby imposed, provided further that the provisions of this act shall not apply to any person, firm, corporation or association of persons owning and operating an electricity generating plant of ten horsepower or less, nor shall the provisions of Sections 1 and 2 of this Act apply to any person, firm, corporation or association of persons manufacturing or generating electricity for their exclusive use or for use upon their own premises by their bona fide operatives or employees, but the tax shall be paid upon as much thereof as may be sold to other than their employees; provided further that nothing in this Act is intended or shall be construed as levying any tax on any subdivision or municipality of the State of Louisiana or any agency of the

State or of any subdivision or municipality thereof.

Levying annual tax on other businesses using electrical or mechanical power.

Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the "prime mover" or "prime movers", operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section



3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugarcane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air.

Section 4. Every person, firm, corporation or association of persons engaged in the business of generating and selling or selling electricity for light, heat or power in this State shall provide itself or themselves with and keep the necessary records and instruments to show respectively the gross receipts from the amount of electricity generated and sold in this State, the amount of gross receipts from the electricity sold in this State, the amount of such gross receipts from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof.

Records to  
be kept.

Every person, firm, corporation or association of persons subject to the tax imposed by

Section 3 hereof, shall provide himself or itself with and keep the necessary records and instruments to show the horsepower capacity of the machinery or apparatus on which the tax imposed by said Section 3 is computed.

**Penalty for violation.**

Any person, firm, corporation or association of persons required to keep either the necessary instruments or records prescribed in this Section shall be subject to a penalty of One Hundred (\$100.00) Dollars per day for each day's failure or omission to keep either the required instruments or required records. Such penalties shall be collected in the same manner as provided herein for the collection of delinquent taxes; provided, upon reasonable cause shown, the Supervisor of Public Accounts may remit or refund the said penalties in whole or in part.

**Duty of Supervisor of Public Accounts to collect tax.**

Section 5. The Supervisor of Public Accounts or his duly authorized representatives shall administer and enforce the collection of the tax imposed by this Act. He shall have the power to enter upon the premises of any tax payer liable for a tax under this Act, and to examine, or cause to be examined any of the instruments or books or records or instruments, books and records of any person, firm, corporation or association of persons subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to make and enforce reasonable rules and regulations and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law.

**Returns to be made to Supervisor of Public Accounts annually.**

Section 6. Every person, firm, corporation or association of persons subject to the tax levied in this act shall annually, between first day of August and the first day of September, make a true and correct return to the Super-

visor of Public Accounts in such form as he may prescribe, showing the gross receipts derived from the sale of electricity manufactured and generated, and the gross receipts derived from the sale of electricity purchased, and the portion of said gross receipts derived from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons, not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, or as the case may be, the horsepower capacity of the machinery or apparatus on which the tax imposed by Section 3 of this Act is computed, in each case during the twelve month period ending on the 31st day of July next preceding the making of such return, and shall pay the tax provided for in this Act, at the time said return is made. All taxes imposed by this Act shall become delinquent on the 1st day of September.

In case of failure to make a true and correct return, as provided in this section, the Supervisor of Public Accounts shall make such return; or cause the same to be made, upon such information as he may be able to obtain, assess the tax due thereon and add a penalty of twenty-five per cent (25%) to the amount of the tax for failure of the taxpayer to make the return.

Failure to  
make re-  
turns.

That if the excise, license or privilege tax due as hereinabove provided is not paid at the time or in the manner specified, by the person, firm, corporation or association of persons owing the same, then the Supervisor of Public Accounts shall make in any manner feasible, and cause to be recorded in the mortgage records of the Parish where such person, firm, corporation or association of persons is engaged, occupied or con-

Recordation  
of lien  
against prop-  
erty by Su-  
pervisor of  
Public Ac-  
counts.

All monies  
to be paid  
to State  
Treasurer.

Section. 13. All monies collected under the provisions of this Act shall be paid to the State Treasurer as and when received and credited to the General Fund and disbursed according to law.

\$25,000 al-  
lowed for  
enforce-  
ment.

Section 14. The cost of auditing, inspection and enforcing this Act shall be borne by the General Fund and the Supervisor of Public Accounts shall withhold from the first sums realized on the collection of the tax levied hereunder a sum not to exceed Twenty-five Thousand (\$25,000.00) Dollars per annum.

Constitu-  
tional pro-  
vision.

Section 15. If any clause, sentence, paragraph, section or part of this Act, shall for any reason, be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section or any part thereof, directly involved in the controversy in which such judgment has been rendered.

Act to be-  
come effec-  
tive August  
1, 1932.

Section 16. The tax levied by this act shall become effective August 1, 1932 and the first return for taxes due hereunder, as provided in Section 6, hereof, shall be made between the first day of August and the first day of September, 1933. In each case, the twelve month period ending July 31st of each year, beginning with the year 1933, shall be the fiscal year for computation of the annual tax imposed by this Act.

Municipal  
and parochial  
corporations  
not per-  
mitted to  
tax.

Section 17. No municipality, parish or other subdivision of the State of Louisiana shall be authorized to levy any excise, privilege or license tax which it would not have been authorized to levy if this act had not been passed, it being the intention of this act that the tax



hereby imposed shall not be repeated or duplicated, in whole or in part, by any municipality, parish or subdivision of the State of Louisiana.

Section 18. Whenever, under the provisions of Section 1 or Section 2 hereof, a person, firm, corporation or association of persons must include in his or its gross receipts the fair value of electricity furnished to a branch of his or its business the fair value of the electricity furnished to such branch shall be a sum which will represent the amount which said branch would have to pay for said electricity if operating independently and purchasing such electricity from such person, firm, corporation or association of persons.

Repealing  
clause.

Section 19. All laws or parts of laws inconsistent or in conflict herewith are hereby repealed.

Approved by the Governor: June 21, 1932.

A true copy:

E. A. CONWAY,  
Secretary of State.

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A. The natural gas produced and purchased by appellee in Louisiana was, so far as it became part of a stream of gas flowing through the company's pipe line to the state line and beyond, moving in interstate commerce from the time it left the wells	9
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B. The engines and compressors operated by the company at the origin of its interstate line in the Parish of Ouachita, Louisiana, are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished	15
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C. The statute involved, as construed by the Supreme Court of Louisiana, imposes an occupation tax with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, consequently, invalid	23
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tinuing in a business or occupation subject to the tax imposed by this Act, a statement, under oath, showing the amount of the tax due by each such person, firm, corporation or association of persons, which statement when filed for record shall operate as a first lien, privilege and mortgage on all of the property of the respective excise, license or privilege tax debtors as the case may be, and said property shall be subject to seizure and sale for the payment of said excise, license or privilege tax due.

notice to be  
given tax  
debtor.

Section 7. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen (15) days thereafter the said Supervisor of Public Accounts shall cause the sheriff and ex-officio tax collector of said parish to seize and sell for the payment of such excise, license or privilege taxes any property whatsoever belonging to the said tax debtor or debtors, as provided above, which may be found within the jurisdiction of the said sheriff and ex-officio tax collector.

uty of  
sheriff and  
ex-officio  
tax Col-  
lector.

Section 8. The sheriff and ex-officio tax collector of any parish when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the excise, license or privilege tax herein provided for after the recordation of the statement hereinabove provided and required and after the notice hereinabove provided for has been given; and all such seizures and sales shall be conducted in the manner and form now required for the sale of similar property for taxes and penalties

shall be imposed and collected as provided by the general license laws of this State.

Any and all physical property or assets or things of value belonging to the said tax debtors are hereby declared to be subject to seizure and sale for the payment of the excise, license or privilege tax herein provided for in preference to any and all other claims, liens and privileges.

Property  
subject to  
seizure.

Section 9. The payment of the excise, license or privilege tax provided for by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for the payment of, all other state, parochial, municipal, district and special taxes levied upon their real estate and other corporal property.

Not to affect  
regular taxes  
on property.

Section 10. Any person who shall intentionally furnish any false information regarding or make any false oath to any report required by this Act shall be deemed guilty of perjury and shall be subjected to all penalties prescribed for said crime.

Penalty for  
making false  
oath.

Section 11. In computing the amount of tax due under the provisions of Section 3 hereof by each person, firm, corporation or association of persons, the horsepower capacity of the machinery or apparatus operated by such person, firm, corporation or association of persons shall be taken as the brake horsepower of the "prime mover" or "prime movers" determined according to the rules and principles of The American Society of Mechanical Engineers.

Basis of com-  
puting tax  
for users of  
power under  
Section 3.

Section 12. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce and cause to be enforced the collection of all taxes that may be due under the provisions of this Act, and to that end the said Supervisor is hereby vested with all of the powers and authority conferred by this Act.

Duty of Su-  
pervisor of  
Public Ac-  
counts to  
collect  
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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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No. 458

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MILTON COVERDALE, SHERIFF AND EX-OFFICIO  
TAX COLLECTOR, APPELLANT,

*versus*

ARKANSAS LOUISIANA PIPELINE COMPANY.

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Appeal from the District Court of the United States for the  
Western District of Louisiana.

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Brief On Behalf Of Arkansas Louisiana  
Pipeline Company, Appellee.

---

H. C. WALKER, JR.,  
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## **OPINIONS OF THE COURT BELOW.**

The opinions rendered in this cause in the United States District Court for the Western District of Louisiana upon the application of appellee for an interlocutory injunction are reported in:

*Arkansas Louisiana Pipeline Company v.  
Coverdale, 17 F. S. 34 (R. 14 & 20).*



The opinion rendered in that Court upon final hearing in the suit is reported in:

*Arkansas Louisiana Pipeline Company v. Coverdale*, 20 F. S. 676 (*Advance opinions No. 7*) (*R. 124*).

### JURISDICTION.

This is a direct appeal from a final decree of a specially constituted United States District Court of three judges (*U. S. C. Title 28, § 380*) permanently enjoining the appellant, as Sheriff of the Parish of Ouachita, an officer of the State of Louisiana, from enforcing a statute of that State (*R. 132*).

The statute involved, Act No. 6 of the Legislature of Louisiana of 1932 (see Appendix), purports under the provisions of Section 3 thereof to levy an "excise, license or privilege tax" as follows:

"Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover' or 'prime movers', operated by such person, firm, corporation

or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; \* \* \*

This statute has been held invalid under the Commerce Clause of the Federal Constitution upon the ground that the tax imposed in its application to engines employed and used by appellee in the conduct of its interstate gas pipe line business constitutes an unlawful burden upon that commerce.

The appeal from the decree may be directly from the District Court to the Supreme Court:

*U. S. C. Title 28, §380.*

The decree of the District Court was rendered May 22nd, 1937 (*R. 132*) and the petition for appeal filed July 30th, 1937 (*R. 134*).

### STATEMENT OF CASE.

The Arkansas Louisiana Pipeline Company, a Delaware corporation, engaged in the States of Louisiana, Arkansas and Texas during the period involved in the business of producing, buying, transporting and selling natural gas, and in the course of that business owning and operating a twenty inch pipe line extending from Sterlington, in the Parish of Ouachita, Louisiana, northwesterly into the States of Texas and Arkansas, through which natural gas was transported, and ninety-six per cent. (96%) thereof sold and marketed in said States, by the use of pumps or compressors propelled by ten (10) one thousand horsepower-gas engines, brought this action to

enjoin the Sheriff of the Parish of Ouachita from proceeding to sell all the property of the corporation situated in that Parish to enforce the payment of an excise or license tax assessed by the Supervisor of Public Accounts of the State of Louisiana (*R. 57*), under the provisions of Act No. 6 of 1932 (*supra*) for the period August 1st, 1932 to July 31st, 1933, of One Dollar (\$1.00) per annum for each horsepower of capacity of the engines employed as stated above.

The ground upon which the injunction was sought and granted in the District Court upon final hearing is that the tax levied by the statute is in its application to the interstate business conducted by the corporation repugnant to the Commerce Clause of the Federal Constitution:

“(a) That the statute contravenes Article 1, Sections 8 and 10 of the Constitution of the United States, reserving to the Congress of the United - the sole power to regulate commerce between the several states in that the tax so demanded is a license or privilege tax upon the use of an instrumentality employed by petitioner in interstate commerce without the operation of which it could not so engage in the interstate business described and is a direct burden upon such interstate commerce.”

(*Petition §16 (a).*)

(*R. 5.*)

Although other grounds of invalidity of the statute were asserted in the original petition, they were formally abandoned (*R. 123*) after the decision of the State Supreme Court construing the statute (*State ex rel. Porterie v. H. L. Hunt, Inc., 182 La. 1073*), with the result that the

sole question presented upon final hearing in the lower court and upon this appeal is the question of invalidity of the statute under the Commerce Clause.

Omitting evidential matters set forth in the assignment of errors (*R. 135*) which has been adopted as the statement of points to be relied upon (*R. 147*), the contentions of appellant as disclosed by the assignment are as follows:

(a) That the engines employed by appellee in connection with the operation of its pipe line are not instrumentalities of interstate commerce, even though the power produced by them is actually consumed in that commerce.

"The Court erred in not holding that the prime movers in the case at bar are engaged in an intrastate function, viz., that of producing, generating or manufacturing mechanical power or energy, and that complainant is engaged in the intrastate business in Louisiana of producing, generating or manufacturing mechanical power or energy and is subject to the tax levied by Section 3 of Act 6 of 1932, which levies an excise, license or privilege tax on the business of producing and generating mechanical energy or power, measured by the horse power capacity of the prime movers used to produce, manufacture or generate such power or energy.

"\* \* \* the Court further erred in not holding that when complainant produces, manufactures and generates mechanical power or energy in Louisiana by the use of prime movers, that such operation or business in Louisiana is intrastate in character, and is subject to the tax levied by Section 3 of Act 6 of 1932, even though such energy or power may ultimately be trans-



mitted and used in both intrastate and interstate operations, or even if it should ultimately be used exclusively to operate an instrumentality of interstate commerce; \* \* \*

(Nos. 5 & 6.)

(R. 137.)

(b) That the tax levied by the statute in question is an excise or license tax upon the privilege of producing or manufacturing mechanical power, an intrastate operation, regardless of the use of such power in interstate commerce.

"The Court erred in failing to hold that the tax levied by Section 3 of Act 6 of 1932 is an excise, license or privilege (fol. 179) tax levied on the privilege of producing, generating or manufacturing mechanical power or energy in Louisiana as a distinct act of producing, and without regard to its subsequent use."

(No. 8.)

(R. 138.)

(c) That the natural gas transported by appellee does not enter interstate commerce until after the engines employed have performed their function of pumping the gas into the twenty inch interstate main.

"The Court erred in failing to hold that the natural gas enters interstate commerce only after its actual physical delivery into the twenty-inch interstate main at complainant's Munce Station; the Court further erred in failing to hold that the gathering of the gas in the field-gathering (fol. 180) systems by both complainant, and persons from whom complainant purchases gas, is intrastate commerce; the Court

further erred in not holding that the conversion of natural gas from an unmerchantable product to a merchantable product at the Munce Station constitutes a manufacturing process and an interruption in the transportation of the natural gas, and is further reason the gas is not in interstate commerce until it is actually physically within the twenty-inch interstate main at complainant's Munce Station."

(No. 11.)

(R. 138 & 139.)

(d) That the tax imposed does not operate as a direct burden upon interstate commerce.

"In the alternative, and in the alternative only, should the tax levied by Section 3 of Act 6 of 1932 be held to be on interstate commerce, which is denied by respondent, then, and in that event only, respondent assigns as error the failure of the Court to find that the tax involved falls not directly on interstate commerce, but indirectly, and not violative of the commerce clause of the Constitution of the United States; the Court further erred in failing to hold that when a tax is, as here, levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that 'it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights,' it is not a prohibited burden on interstate commerce, but is a valid exercise of the power of the State to tax."

(No. 13.)

(R. 139 & 140.)

It is apparent from the statement of the several contentions set forth that the single theory advanced by

appellant is that even though mechanical power is used or consumed as the means by which interstate transportation is accomplished, there is, nevertheless, a point at which the power is produced and prior to its use which can be termed "manufacture" and as a local privilege separated from the interstate nature of the business conducted and subjected to state taxation.

Under appellee's view of the case the question actually presented is whether or not engines which produce power consumed as the means by which interstate transportation is accomplished are to be considered as instrumentalities of that commerce; and under the appellant's theory the question is whether or not the production of power consumed as the means by which interstate transportation is accomplished is to be considered as an instrumentality of interstate commerce.

## ARGUMENT

### SUMMARY.

A. The natural gas produced and purchased by appellee in Louisiana was, so far as it became part of a stream of gas flowing through the company's pipe line to the State line and beyond, moving in interstate commerce from the time it left the wells.

B. The engines and compressors operated by the company at the origin of its interstate line in the Parish of Ouachita, Louisiana, are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished.

C. The statute involved, as construed by the Supreme Court of Louisiana, imposes an occupation tax with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, consequently, invalid.

D. The tax imposed by the statute is a direct burden on the interstate business conducted by appellee.

A.

There is actually no dispute concerning any ultimate fact involved in this case and in referring to the facts of the case we shall state only those which are uncontroverted in any manner.

The twenty inch pipe line of the Arkansas Louisiana Pipeline Company, extending from Sterlington, in the Parish of Ouachita, Louisiana, into the States of Arkansas and Texas, is connected at the point of origin with field gathering lines extending into the Parishes of Ouachita and Richland (See plat *R. 76*). Gas flows through the gathering lines from the wells under the respective well pressures, the average of which is from ninety (90) to two hundred twenty (220) pounds per square inch (*R. 69*) to a central point at the origin of the twenty inch main, called the Munce Compressor Station, where it is pumped or compressed into the main by the engines and compressors involved in this controversy.

In order to have sufficient gas available to make deliveries at distant points to meet business requirements, the pressure by volume of gas in the twenty inch main line is maintained at from two hundred seventy-five (275) to



four hundred fifty (450) pounds per square inch (*R. 73*). Because of the difference of pressures, gas from the field lines cannot be delivered directly into the twenty inch main without compression; and although the capacity of the producing wells is in no manner affected by the action of the compressors, a pressure differential is created which permits a flow of gas through the field lines to the inlets of the compressor cylinders, the function of the compressors with regard to the field lines being merely to remove gas at the location of the compressors and by such removal permit the flow of additional gas into such lines from the well pressures (*R. 45*).

As the gas approaches the location of the compressors through the field lines, it passes through separators in which the water and gasoline content are removed; and although the rate of flow is diminished at the point of the separators to permit their function, the flow from the wells through the field lines to the compressors and into the main line is not interrupted (*R. 87 & 92*).

It consequently appears that the flow of gas is continuous from the wells as pumped or compressed into the main line in quantities or volume determined by the daily withdrawals to meet business requirements.

During the period for which the tax in controversy was assessed (August 1st, 1932 to July 31st, 1933), 18,365,659 m.c.f of gas was transported through the twenty inch pipe line from Sterlington, westward (*R. 65*), of which amount ninety-six per cent. (96%) was transported

out of the State of Louisiana and sold in the States of Texas and Arkansas (*R. 64*), the daily deliveries dependent on seasonal and other requirements ranging from forty-five million to eighty-five million cubic feet (*R. 68*). Of the total amount of gas so transported, 2,012,397 m.c.f. was produced from wells owned by the pipe line company and 16,080,181 m.c.f. purchased.

It will undoubtedly be conceded that natural gas is a lawful article of commerce and its transmission from one state to another for sale and consummation in the latter is interstate commerce and that a state law, whether of the state where the gas is produced or that where it is to be sold which by its necessary operation prohibits, obstructs or burdens such transmission, is a regulation of interstate commerce and a prohibited interference.

*Pennsylvania v. W. Virginia*, 262 U. S. 553;  
67 L. Ed. 1117;

*West v. Kansas Natural Gas Co.*, 221 U. S.  
229; 55 L. Ed. 716;

*Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23; 64 L. Ed. 434.

In considering whether or not any transaction or operation is a part of commerce between the states, the course of business as established by the interested parties or the intention as carried out determines as a matter of law the essential nature of the movement. When a product is intended for interstate commerce and handled in accordance with that intention to be ultimately distributed in interstate commerce and the course of business pursued establishes a practice indicating a continuous movement,

then the product is involved in commerce between the states when first handled in the intended interstate movement.

See:

*Lemke v. Farmers' Grain Company*, 258 U. S. 50; 66 L. Ed. 458;

*B. O. & S. W. RR. Co. v. Settle*, 260 U. S. 166; 67 L. Ed. 189;

*Stafford v. Wallace*, 258 U. S. 495; 66 L. Ed. 735;

*Flanagan v. Federal-Coal Co.*, 267 U. S. 222; 69 L. Ed. 583.

The principles announced in these cases have been applied directly to the transportation of oil and gas by pipe line.

In *Eureka Pipe Line Company v. Hallanan*, 257 U. S. 265; 66 L. Ed. 227, the state of West Virginia sought to impose against the pipe line company a tax of two cents per barrel upon oil transported through its pipe lines. The substantial facts and conclusion reached in the decision are stated in the syllabus as follows:

"State produced oil, gathered by a pipe line company and transported by it under a local tariff covering intrastate transportation and storage, was, so far as it became part of a stream of oil that was flowing through the company's pipes to the state line and beyond, moving in interstate commerce from the time it left the wells, so as to prevent the state from subjecting the company to a license or occupation tax measured by the volume of such traffic, and none the less so because, if different orders from the producers had been received by the pipe line company, it would have changed the destination toward which the oil was started and at which it in fact arrived, the pipe line company, not the pro-

ducer, being the master of the destination of any specific oil."

(Syl. §2.)

In the course of the opinion, the Court said:

"As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax, to be valid, 'must not, in its practical effect and operation, burden interstate commerce.' It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived. We repeat that the pipe line company, not the producer, was the master of the destination of any specific oil. Therefore its intent and action determined the character of the movement from its beginning, and neither the intent nor the direction of the movement changed."

(P. 272.)

The same conclusion was reached as to a gas pipe line in the connected case of *United Fuel Gas Company v. Hallanan*, 257 U. S. 277; 66 L. Ed. 234, where the following statement appears in the syllabus:

"A corporation engaged in gathering and purchasing natural gas, which it distributes through its pipes, may not be subjected to a state license or occupation tax measured by the volume of the traffic, where the great body of the gas starts for points outside the state, and goes to them either in the company's own pipes or those of connecting companies, to whom it sells, although the necessities of business require a much smaller amount of gas, destined to points inside the state, to be carried undistin-



guished in the same pipes, and although, as to the gas sold to the connecting companies, the seller and purchasers may change their minds before the gas leaves the state, and the precise proportions between local and outside deliveries may not have been fixed."

(Syl. §2.)

The same rule was again announced in *Peoples Natural Gas Company v. Public Service Commission*, 270 U. S. 550; 70 L. Ed. 726, from which we quote the following statement of the syllabus:

"The transportation of natural gas in pipe lines from producing wells in one state to consumers in another is interstate commerce although it is purchased from the producer at the state line by a distributor through the agency of a meter there installed, where the transportation is continuous from the place of production to that of consumption, with prompt delivery to purchasers at destination."

(Syl. §1.)

See also:

*State Tax Commission v. Interstate Natural Gas Company*, 284 U. S. 41; 76 L. Ed. 156;

*West Virginia Pipe Line Company v. State*, 120 S. E. 759.

The facts of this case disclose a continuous flow of gas from the wells situated in the State of Louisiana to the final destination in the States of Arkansas and Texas according to a practice definitely established and fixed by the nature and location of the pipe lines, with daily and constant withdrawals at the points of destination. The gas transported, consequently, was moving in interstate commerce from the time it left the wells.

## B.

The nature of the design and assembly of the machines employed by the pipe line company in the compression of gas at the point of origin of its interstate line is shown by the plat of similar apparatus appearing in the record (*R. 90*).

The function of these machines is concisely stated in the affidavit of H. T. Goss as follows:

"Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is (fol. 59) an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines.

"Briefly described, the energy created by the explosion of a mixture of natural gas and air under proper conditions in the engine cylinder is imparted directly by means of the piston rod to the compressor cylinder in which the natural gas is compressed. The energy so created has no commercial value in the sense that electricity has a commercial value. The energy created due to the physical design, assembly and type of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder.

"In the process of compression, the chemical properties of the natural gas itself remain unchanged.

"The flow of natural gas through a pipe line is a function involving various factors, the most important of which are:

- (1) The inlet pressure.
- (2) The outlet pressure.
- (3) The length of the line.
- (4) The size (diameter) of the pipe.
- (5) The quantity of gas to be transported.

"From the above it is apparent that for any given condition as to length and size of line, the flow of a given quantity of gas through a pipe line depends on the difference in pressure of the gas between the inlet and outlet points. In other words, difference in pressure between any two points along a pipe line causes a flow of gas between the two points and through the pipe line.

"It is also apparent from the above, that theoretically, a line could be constructed for the transportation of gas without the means of artificially boosting the pressures, (fol. 60) so long as any pressure exists at the inlet. However, in some cases, practical and economic limits preclude such enormous sizes of pipe lines that in practical design and construction, smaller size lines are selected and compressor stations are installed to increase the pressure of the gas to such an extent as to cause the flow of the required amount of gas through the pipe size selected. In other words, the installation and operation of a compressor station, such as that referred to as the Munce Compressor Station, is for the sole purpose of affording means of transporting required volumes of gas through the pipe lines and without such equipment, such transportation would be impossible.

"The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome fric-

tional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe line, which movement to the required degree would be impossible without such power."

(R. 44 & 45.)

The above statement with regard to the function of the engines employed relates to facts of which this Court could take cognizance without proof, and the nature of the function of the engines is such that it cannot be seriously contended that they are not the principal means through which the interstate transportation of natural gas is accomplished. The facts with regard to the function of these engines as instrumentalities of interstate commerce cannot be distinguished from the facts of other cases decided by this Court, in which the means by which interstate commerce was accomplished has been held to be a necessary instrumentality of that commerce.

The general rule with regard to the limitation of the right of a state to impose taxes, the effect of which is to burden interstate commerce in its application to instrumentalities of that commerce, is clearly stated in *Helson v. Kentucky*, 279 U. S. 245, 73 L. Ed. 683, as follows:

"The statute here assailed clearly comes within the principle of these and numerous other decisions of like character which might be added. The tax is exacted as the price of the privilege of using an instrumentality of interstate commerce.



It reasonably cannot be distinguished from a tax for using a locomotive or a car employed in such commerce. A tax laid upon the use of the ferryboat would present an exact parallel. And is not the fuel consumed in propelling the boat an instrumentality of commerce no less than the boat itself? A tax which falls directly upon the use of one of the means by which commerce is carried on directly burdens that commerce. If a tax cannot be laid by a state upon the interstate transportation of the subjects of commerce, as this court definitely has held, it is little more than repetition to say that such a tax cannot be laid upon the use of a medium by which such transportation is effected. 'All restraints by exactions in the form of taxes upon such transportation, or upon acts necessary to its completion, are so many invasions of the exclusive power of Congress to regulate that portion of commerce between the states.' *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 214, 29 L. ed. 165, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826."

(P. 252.)

See also:

*Cooney v. Mountain States T. & T. Company*, 294 U. S. 384; 79 L. Ed. 934;

*State Tax Commission of Mississippi v. Interstate Natural Gas Company*, 284 U. S. 41; 76 L. Ed. 156;

*Bingaman v. Golden Eagle Western Lines*, 297 U. S. 626; 80 L. Ed. 928;

*Pickard v. Pullman Southern Car Co.*, 117 U. S. 34; 29 L. Ed. 785;

*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196; 29 L. Ed. 158;

*Sprout v. South Bend*, 277 U. S. 163; 72 L. Ed. 833;

*Minot v. Philadelphia W. & B. Ry. Co.*, 2 Abb. (U. S.) 323, 343; Federal Case No. 9645.

From the points presented in appellant's assignment of errors it appears that it is contended the interstate transportation of gas did not commence until the gas transported was physically delivered within the twenty inch main line. Such a contention assumes that the function of the engines and compressors situated at the origin of the interstate main was merely to load gas into the line rather than to bring about the transportation through the force of the additional pressures created at the point of origin. If the view suggested were to be accepted and the transportation of gas through the field lines considered as entirely independent of the transportation through the main or interstate line and the function of the engines and compressors considered to be performed entirely in the loading of gas from the field lines into the interstate main, this function would, nevertheless, constitute an indispensable part of the interstate transportation, since the transportation would be futile unless the gas transported was placed or forced into the line.

The business of loading and unloading is interstate or foreign commerce:

*Puget Sound Stevedoring Co. v. Tax Commission*, Case No. 68, October Term, 1937; L. Ed. *Advance Opinions*, Vol. 82, #3, page 64; *Philadelphia & S. Mail S. S. Co. v. Pennsylvania*, 122 U. S. 326, 341, 342; 30 L. Ed. 1200, 1203, 1204, 7 S. Ct. 1118, 1 *Inters. Com. Rep.* 308;

*Leloup v. Port of Mobile*, 127 U. S. 640, 32 L. Ed. 311, 8 S. Ct. 1380, 2 *Inters. Com. Rep.* 134;

*Galveston H. & S. A. R. Co. v. Texas*, 210 U. S. 217, 52 L. Ed. 1031, 28 S. Ct. 638.

The contention of the appellant is that the functions of the engines employed in the business of the appellee in producing or generating power can be separated from the consumption or use of that power in interstate commerce and, as so separated, considered as a local privilege and not as an instrumentality of the interstate commerce in which it is consumed. It is urged that this view is supported by the decision in *Utah Power & Light Company v. Pfof*, 286 U. S. 165, 76 L. Ed. 1038.

The facts of that case are that the Utah Power & Light Company, a public utility, was engaged in doing business in the States of Idaho, Utah and Wyoming, generating, transmitting and distributing electrical power and energy for sale to consumers in each of the states mentioned and in interstate commerce among them. The suit was brought to enjoin the enforcement of an act of the Idaho Legislature levying a license tax on the manufacture, generation and production within the state for sale of electricity and electrical energy. The Utah Power & Light Company contended that the tax was not one upon manufacture or production but on the transfer or transmission of energy from its source to its place of use, and that the generator through which the energy of water power was converted into electrical energy was an instrumentality of interstate commerce; the opposite contention being that the generation of electrical energy was a distinct act of production and without regard to its subsequent transmission.

In the course of the opinion, the Court said:

"Appellant here, by means of what are called generators, converts the mechanical energy of fall-

ing water into electrical energy. Thus, by the application of human skill, a distinct product is brought into being and transmitted to the places of use. The result is not merely transmission; nor is it transmission of the mechanical energy of falling water to the places of consumption; but it is, first, conversion of that form of energy into something else, and, second, the transmission of that something else to the consumers.

"While conversion and transmission are substantially instantaneous, they are, we are convinced, essentially separable and distinct operations. The fact that to ordinary observation there is no appreciable lapse of time between the generation of the product and its transmission does not forbid the conclusion that they are, nevertheless, successive and not simultaneous acts.

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. *On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce.*" (Italics ours).

(P. 179.)

The obvious distinction and difference between the facts of the *Pfost* case and the case presented here is that electrical energy, because of the peculiar nature of that substance, was transmitted over the lines of the producing company by its own force; whereas, natural gas produced by the plaintiff in this case is not and cannot be transmitted efficiently in the interstate business conducted, except through the application of additional force in the form of the machinery employed at the compressor station in



the Parish of Ouachita and the use there of the engines by the capacity of which the tax imposed is measured.

The distinction is emphasized by the fact that in the State of Louisiana the producer of natural gas pays what is termed a severance tax upon the right to produce that product; and the taxes complained of here are imposed in addition to the severance tax which is levied upon production. The taxes are distinct and affect entirely different operations.

As pointed out in the *Pfost* case, *supra*, taxation is a practical matter, and what constitutes commerce, manufacture or production is to be determined upon practical considerations.

"We must not lose sight of the fact that taxation is a practical matter and that what constitutes commerce, manufacture or production is to be determined upon practical considerations."

(P. 179.)

In the present case power or mechanical energy is produced only as and to the extent it is used or consumed in accomplishing the interstate transportation of natural gas. The suggestion that this production of power merely as it is consumed can be termed "manufacture" independently of the purpose accomplished in its use is at least novel and plainly opposed to the view accepted in the case of *Helson v. Kentucky*, 279 U. S. 245, 73 L. Ed. 683, in which it was held that fuel consumed in propelling a ferryboat was an instrumentality of commerce no less than the boat itself.

Applying the theory advanced by appellant a railway locomotive would not be considered an instrumentality of interstate commerce even though engaged in hauling a train in that commerce. Under that theory the only instrumentality of the interstate commerce would be the cars in which goods or passengers were transported, and a railway locomotive and the power produced by it would be subject to the tax involved in this cause to the same extent as the engines employed at the compressor station at the origin of the interstate pipe line. In fact, except for the provision of the statute exempting self-propelled vehicles from the operation of the tax imposed, the argument advanced would be exactly appropriate to the function performed by a railway locomotive or the machinery in a ferryboat, considered in the case of *Helson v. Kentucky*, *supra*.

The theory advanced in the light of practical application is unsound and results only from erroneously designating consumption and use as a process of manufacture. The engines employed at the Munce Compressor Station and the power produced by them are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished.

### C.

The arguments presented by appellant are based upon the theory that a state may impose an occupational tax upon all those engaged in the business of manufacturing or generating power of any character and that such a tax will not be considered as a prohibited burden upon interstate commerce even though the power manufactured

is actually consumed in that commerce. Whatever may be said of the soundness of such a theory, which we do not concede in its application to the facts of this case, the arguments are entirely theoretical for the reason that the tax imposed by the statute in controversy is not a tax of that character. Under the plain provisions of the statute the tax is imposed upon all persons engaged in any business or occupation, other than those particularly exempted, in the conduct of which is used at any time electrical or mechanical power of more than ten horsepower. For convenience we quote again the relevant provisions of that statute:

"Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license, or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover', or 'prime movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; \* \* \* and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other

occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugarcane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air."

Although the statute does not set forth an enumeration of the several businesses and occupations subjected to the payment of the tax imposed by any orthodox standard of designation of businesses and occupations, the tax imposed, nevertheless, appears to be an occupational tax, with a general classification of all businesses in which electrical or mechanical power is used. The fact that the tax was intended to be, and is, a tax upon each occupation and business in which mechanical power is employed is further emphasized by the exemptions of the statute which relate to specific businesses and occupations by usual and customary designations. The result of exempting from the operation of the tax those engaged in occupations exempt from license taxation under certain provisions of the State Constitution, sawmill and sugar businesses, etc., is in effect to specially enumerate all other businesses in which mechanical power is employed and to impose the tax on those businesses as though specially named in the statute.

Considering the tax otherwise than as a tax imposed upon the occupation or business conducted, it must be said to be an excise or license tax upon the privilege of using or employing machinery or mechanical apparatus in the



conduct of any business not specially exempted from the operation of the statute; and in so far as the validity of the statute is questioned in this proceeding, it seems immaterial whether the tax is denominated a tax upon an occupation or upon the privilege of using machinery or mechanical apparatus. It is definitely settled by numerous decisions of this Court that a state cannot lay a tax on interstate commerce in any form, whether by a tax on the occupation or business of carrying it on or indirectly by taxing the use of means of transportation or commerce.

*Helson v. Kentucky*, 279 U. S. 245; 73 L. Ed. 683;

*Minot v. Philadelphia W. & B. Ry. Co.*, 2 Abb. (U. S.) 323, Fed. Cas. No. 9645;

*Bingaman v. Golden Eagle Western Lines*, 297 U. S. 626; 80 L. Ed. 928.

The contention here is that the tax imposed is an unlawful burden upon interstate commerce, and it is consequently unimportant whether the tax is said to be imposed upon the business of carrying on that commerce or indirectly upon the use of the means through which the interstate transportation of natural gas is accomplished.

The measure of the tax imposed by the statute is the size or capacity of the machinery or apparatus operated in the business subject to the tax and has no reasonable relationship whatever to the amount of power generated or produced. It is unimportant under the statute how much power is produced or consumed; and once any machine or apparatus is used for a single day, the tax is imposed according to the full rated horsepower capacity of the machinery. We can imagine no tax validly imposed upon the exercise of a privilege of any kind where the

basis of the tax has no reasonable relationship to the privilege exercised or conferred.

*Air-way Electric Appliance Corporation v. Day*,  
266 U. S. 71, 69 L. Ed. 169.

The fact that the tax in this case is not measured in any sense by the amount of power produced or hours during which the machinery or apparatus is operated in itself indicates that there was no intention to impose a tax upon the manufacture or production of power.

The statute has been construed by the Supreme Court of the State of Louisiana and the tax held to be an excise, license or privilege tax "collectible only from those who in the conduct of their businesses or occupations use electrical or mechanical power of more than 10 horsepower".

*State ex rel. Porterie v. H. L. Hunt, Inc.*, 182  
La. 1073.

Upon the question of construction the decision of the state court will, of course, be accepted; but with regard to rights asserted under the Federal Constitution, this Court will regard the substantial operation and effect of the law as applied and enforced regardless of the characterization or form in which the taxing scheme is cast.

*St. Louis S. W. R. Co. v. Arkansas ex rel. Norwood*, 235, U. S. 350; 59 L. Ed. 266:

"Upon the mere question of construction we are, of course, concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the character-

ization of that scheme as adopted by the state court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state. *Henderson v. New York* (*Henderson v. Wickham*) 92 U. S. 259, 268, 23 L. ed. 543, 547; *Williams v. Mississippi*, 170 U. S. 213, 225, 42 L. ed. 1012, 1016, 18 Sup. Ct. Rep. 583; *Smith v. St. Louis & S. W. R. Co.* 181 U. S. 248, 257, 45 L. ed. 847, 850, 21 Sup. Ct. Rep. 603; *Stockard v. Morgan*, 185 U. S. 27, 37, 46 L. ed. 785, 794, 22 Sup. Ct. Rep. 576; *Reid v. Colorado*, 187 U. S. 137, 151, 47 L. ed. 108, 115, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Galveston, H. & S. A. R. Co. v. Texas*, 210, U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638; *Western U. Teleg. Co. v. Kansas*, 216 U. S. 1, 27, 54 L. ed. 355, 366, 30 Sup. Ct. Rep. 190; \* \* \*

(Pp. 362 & 363.)

In the case of *State ex rel. Porterie v. H. L. Hunt, Inc.*, 182 La. 1073, it was contended that the tax imposed by the statute in question was actually a property tax and, consequently, invalid under provisions of the State and Federal Constitutions. In the course of the opinion the tax levied by the statute was described and construed in the following language:

"The tax levied under Act No. 6 of 1932 is not based on the ownership and the assessed value of the machines or apparatus described in the act. It is based on their *use* in the *user's* business, whether he is the owner or not, and irrespective of their assessed value. Under the statute, no tax is due by the owner of the machines or apparatus described therein unless they are used in the conduct of his business. But the owner's nonuse of the machines or apparatus does not exempt him from the payment of an ad valorem or property tax thereon.

"Act No. 6 of 1932 designates the tax levied under its provisions as an excise, license, or privilege tax. What characterizes the tax in dispute as a license or privilege tax is that it is collectible only from those who in the conduct of their businesses or occupations use electrical or mechanical power of more than 10 horsepower. The measure of the tax is the horsepower capacity, exceeding 10, of the machines or apparatus *used* in generating the electrical or mechanical power *used* in the taxpayer's business. Ownership is immaterial. The tax is not based on ownership. It is not levied or collectible from the owner of the property *unless he uses it* in the conduct of his business and then only in proportion to the horsepower capacity of the property." (Italics ours).

(Pp. 1079-1080.)

From the statements quoted it is apparent that the tax is not imposed upon any incident of ownership fixed or determined prior to use of the apparatus employed in the user's business but, in substance, is a tax upon the use of the apparatus employed, the incidence of which is fixed by use alone. The case presented is not one of the mere use of an instrumentality of interstate commerce subsequent to the incidence of the tax imposed (see: *Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace*, 288 U. S. 249-268), but one in which the tax imposed falls directly upon use, the incidence of the tax being upon use of the instrumentality employed and not until use. It follows that when a business subjected to the operation of the statute is conducted as an interstate business, the tax is imposed upon the business of conducting interstate commerce or indirectly upon the use of an instrumentality without which that commerce could not be accomplished.



In the case of *Cooney v. Mountain States T. & T. Company*, 294 U. S. 384; 79 L. Ed. 934, it appears that the State of Montana had levied a privilege or occupation tax upon all those engaged in the telephone business, measured by the number of telephone instruments owned and controlled in the State. The defendant, Mountain States T. & T. Company, resisted the payment of the tax upon the ground that it constituted an illegal interference with interstate commerce, because the instruments owned by the company located in the State of Montana were used indiscriminately in intrastate and interstate business. In reaching the conclusion that such a tax was invalid, the Court in the course of the opinion said:

"A privilege or occupation tax which a State imposes with respect to both interstate and intrastate business, through an indiscriminate application to instrumentalities common to both sorts of commerce, has frequently been held to be invalid. *Leloup v. Mobile*, 127 U. S. 640, 32 L. ed. 311, 8 S. Ct. 1380, 2 Inters. Com. Rep. 134, supra; *Pickard v. Pullman S. Car Co.*, 117 U. S. 34, 46, 29 L. ed. 785, 789, 6 S. Ct. 635; *Crutcher v. Kentucky*, 141 U. S. 47, 59, 35 L. ed. 649, 652, 11 S. Ct. 851; *Barret v. New York*, 232 U. S. 14, 29, 31, 58 L. ed. 483, 489, 490, 34 S. Ct. 203; *Platt v. New York*, 232 U. S. 35, 36, 58 L. ed. 492, 493, 34 S. Ct. 209; *Bowman v. Continental Oil Co.*, 256 U. S. 642, 647, 648, 65 L. ed. 1130, 1144, 1145, 41 S. Ct. 606. In the cases of the express companies, the principle was applied to a privilege tax imposed alike with respect to wagons used in the movement of both interstate and intrastate shipments. The local shipments 'were handled in the same vehicles, and by the same men' that were employed in connection

with the interstate transportation and it was impracticable to effect a separation. *Barrett v. New York*, 232 U. S. 14, 58 L. ed. 483, 34 S. Ct. 203, and *Platt v. New York*, 232 U. S. 35, 58 L. ed. 492, 34 S. Ct. 209, *supra*. In *Bowman v. Continental Oil Co.*, 256 U. S. 642, 65 L. ed. 1139, 41 S. Ct. 606, *supra*, the question arose under a statute of New Mexico laying an annual license tax of fifty dollars for each station distributing gasoline. The Court pointed out the distinction between an excise tax on sales of gasoline where, as the subject matter was separable, full protection could be afforded by enjoining enforcement as to the interstate business, and the license tax which with its prohibition fell upon the business as a whole. The Court said: 'But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void.' The difficulty, continued the Court, 'is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute—that is to say, without authority of law. Hence, it cannot be enforced at all.'

"In the instant case, the tax, being indivisible and indiscriminate in its application, necessarily burdens interstate commerce. We do not pass upon the other questions presented."

(Pp. 393-394.)

In the case of *State Tax Commission of Mississippi v. Interstate Natural Gas Company*, 284 U. S. 41; 76 L. Ed. 156, the Supreme Court held a statute of the State of

Mississippi invalid as an unlawful burden upon interstate commerce which imposed a tax upon pipe lines as follows:

"Section 171. Pipe Line Company—Upon each person engaging and/or continuing in this state in the business of operating a pipe line or transporting in or through this state oil, or natural or artificial gas, through pipes, and/or conduits, a tax, as follows:

On each mile of pipe having a diameter of  
20 inches or more . . . . . \$50.00

On each mile of pipe having a diameter of  
15 inches and less than 20 inches . . . \$35.00

On each mile of pipe having a diameter of  
12 inches and less than 15 inches . . . \$25.00

On each mile of pipe having a diameter of  
less than 12 inches . . . . . \$10.00"

*Privilege Tax Code of Mississippi Laws of  
1932 H. B. No. 660.*

Similar cases are reported in the following decisions of this Court:

*Bowman v. Continental Oil Company*, 256 U. S. 642; 65 L. Ed. 1139;

*Sprout v. South Bend*, 277 U. S. 163; 72 L. Ed. 833.

See also:

*Helsen v. Kentucky*, 279 U. S. 245; 73 L. Ed. 683;

*Bingaman v. Golden Eagle Western Lines*, 297 U. S. 626; 80 L. Ed. 928;

*Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196; 29 L. Ed. 158;

*Pickard v. Pullman Southern Car Company*, 117 U. S. 34; 29 L. Ed. 785.

The statute in question is an occupation or privilege tax levied with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, in its operation upon the interstate business conducted by appellee, invalid.

D.

During the period involved in this suit ninety-six per cent. (96%) of the natural gas transported by appellee through its main twenty inch line was delivered through the power produced from the engines at the origin of that line in interstate commerce into the States of Texas and Arkansas. The tax levied by the statute is based entirely upon the horsepower capacity of the engines employed, and there is no theory upon which the tax could be considered as separable or divisible with regard to interstate business.

The appellee necessarily conducts its interstate and domestic business in distributing natural gas indiscriminately through the same lines and by the same agencies, and the tax cannot be enforced at all without interfering with interstate commerce unless it be enforced in some manner other than that set forth in the statute or without legal authority. The result is that it cannot be enforced at all.

*Bowman v. Continental Oil Company*, 256 U. S. 642; 65 L. Ed. 1139;

*Cooney v. Mountain States T. & T. Company*, 294 U. S. 384; 79 L. Ed. 934;

*Sprout v. South Bend*, 277 U. S. 163; 72 L. Ed. 833.



To support the contention that the tax does not operate as a direct burden upon interstate commerce, appellant relies upon the case of *Wiggins Ferry Company v. City of East St. Louis*, 2 S. Ct. Rep. 257. The decision in that case involved the right of the State, which had granted the franchise to the ferry company by legislative act and upon specific conditions, to tax the exercise of the rights granted under the franchise. The facts of the case and issues involved are not comparable to the facts and issues in this cause and the citation, we submit, is not appropriate. Compare *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196.

### CONCLUSION.

In the discussion of the facts of this case we have referred only to the ten 1000HP engines employed directly in pumping gas into the interstate main and have not mentioned the two 250HP engines connected to the electric generators at the so-called Munce Compressor Station. The functions performed by these two engines are such that they compose a component part of the system through which the interstate transportation is accomplished (R. 49), with the result that no distinction can be made with regard to their use. The function performed by these engines is described in the Record as follows:

"Munce Station at Sterlington consists of ten 1,000 horsepower Cooper Bessemer gas burning engines, directly connected to ten gas compressors, and two 250 horsepower gas burning engines directly connected to electric generators; all housed in one main building and an auxiliary building in which is also a machine shop. The station can not be operated without the use of auxiliary power to

furnish station lighting, water for cooling the engines and pumps, compressed (fol. 67) air for starting the engines, and power for the machine shop; the most convenient method of furnishing such auxiliary power is in the form of electric energy, and at the present time all gas compressor stations use electric energy for incidental power required for the purposes mentioned."

*Affidavit of W. E. Nestor, R. 49.*

It is apparent that the function performed by these two smaller engines was that of a necessary instrumentality through which the interstate transportation of natural gas was accomplished.

For the reasons stated, it is respectfully submitted that the tax involved is repugnant to the commerce clause of the Federal Constitution and that the decree of the lower court should be affirmed.

Respectfully submitted,

H. C. WALKER, JR.,

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WALKER & O'QUIN,

Attorneys for Appellee.

## **APPENDIX**

## ACT NO. 6.

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House Bill No. 286.

By Mr. Lee.

### AN ACT

"To raise additional revenue for the State of Louisiana by levying an excise, license or privilege tax on persons, firms, corporations and associations of persons engaged in the business of manufacturing or generating or selling electricity for heat, light, or power, in the State of Louisiana and on persons, firms, corporations and associations of persons engaged in certain other businesses or occupations using electrical or mechanical power produced by such persons, firms, corporations or associations of persons; providing for the keeping and maintaining of necessary records and instruments for computing the tax hereby imposed; providing penalties for the failure or omission to keep the required instruments and records; providing for the enforcement of this Act by the Supervisor of Public Accounts; providing penalties for the failure to make true and correct returns hereunder; providing for the seizure and sale of the tax debtor's property in case of failure to pay the said taxes; providing that any person intentionally furnishing false information or making false oath under this Act shall be guilty of perjury; providing that all monies collected under this Act shall be paid into the General Fund; providing that Twenty-five Thousand (\$25,000.00) Dollars per annum shall be deducted from the funds collected under this Act for the enforcement thereof; providing that if any clause, sentence, paragraph, section or any part of this act be adjudged invalid, such judgment shall not affect or impair or in-



validate the remainder of this Act; providing that the tax levied by this Act shall become effective August 1st, 1932; prohibiting any municipality, parish or other subdivision of the State of Louisiana from repeating or duplicating in whole or in part the tax hereby imposed; and repealing all laws or parts of laws inconsistent or in conflict herewith.

"Section 1. Be it enacted by the Legislature of Louisiana, that in addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent per annum of the gross receipts from the sale of the electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided.

"Section 2. In addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons, engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent. per annum of the gross receipts from the sale of such electricity, not manufactured or generated by him or it sold in the State of Louisiana, except the re-

ceipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided; provided that if any person, firm, corporation or association of persons, the principal use of whose electric facilities is the generation of electricity for sale, shall furnish any electricity for heat, light or power, to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, the fair value of the electricity furnished to such branch shall be included in the gross receipts of such person, firm, corporation or association of persons for the purpose of computing the tax hereby imposed; provided further that the provisions of this act shall not apply to any person, firm, corporation or association of persons owning and operating an electricity generating plant of ten horsepower or less, nor shall the provisions of Sections 1 and 2 of this Act apply to any person, firm, corporation or association of persons manufacturing or generating electricity for their exclusive use or for use upon their own premises by their bona fide operatives or employees, but the tax shall be paid upon as much thereof as may be sold to other than their employees; provided further that nothing in this Act is intended or shall be construed as levying any tax on any subdivision or municipality of the State of Louisiana or any agency of the State or of any subdivision or municipality thereof.

"Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or

association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar (\$1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover', or 'prime movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery

and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugarcane or producing raw sugar; or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air.

"Section 4. Every person, firm, corporation or association of persons engaged in the business of generating and selling or selling electricity for light, heat or power in this State shall provide itself or themselves with and keep the necessary records and instruments to show respectively the gross receipts from the amount of electricity generated and sold in this State, the amount of gross receipts from the electricity sold in this State, the amount of such gross receipts from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof.

"Every person, firm, corporation or association of persons subject to the tax imposed by Section 3 hereof, shall provide himself or itself with and keep the necessary records and instruments to show the horsepower capacity of the machinery or apparatus on which the tax imposed by said Section 3 is computed.



"Any person, firm, corporation or association of persons required to keep either the necessary instruments or records prescribed in this Section shall be subject to a penalty of One Hundred (\$100.00) Dollars per day for each day's failure or omission to keep either the required instruments or required records. Such penalties shall be collected in the same manner as provided herein for the collection of delinquent taxes; provided, upon reasonable cause shown, the Supervisor of Public Accounts may remit or refund the said penalties in whole or in part.

"Section 5. The Supervisor of Public Accounts or his duly authorized representatives shall administer and enforce the collection of the tax imposed by this Act. He shall have the power to enter upon the premises of any tax payer liable for a tax under this Act, and to examine, or cause to be examined any of the instruments or books or records or instruments, books and records of any person, firm, corporation or association of persons subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to make and enforce reasonable rules and regulations and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law.

"Section 6. Every person, firm, corporation or association of persons subject to the tax levied in this act shall annually, between first day of August and the first day of September, make a true and correct return to the Supervisor of Public Accounts in such form as he may prescribe, showing the gross receipts derived from the sale of electricity manufactured and generated, and the gross

receipts derived from the sale of electricity purchased, and the portion of said gross receipts derived from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons, not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, or as the case may be, the horsepower capacity of the machinery or apparatus on which the tax imposed by Section 3 of this Act is computed, in each case during the twelve month period ending on the 31st day of July next preceding the making of such return, and shall pay the tax provided for in this Act, at the time said return is made. All taxes imposed by this Act shall become delinquent on the 1st day of September.

“In case of failure to make a true and correct return, as provided in this section, the Supervisor of Public Accounts shall make such return, or cause the same to be made, upon such information as he may be able to obtain, assess the tax due thereon and add a penalty of twenty-five per cent (25%) to the amount of the tax for failure of the taxpayer to make the return.

“That if the excise, license or privilege tax due as hereinabove provided is not paid at the time or in the manner specified, by the person, firm, corporation or association of persons owing the same, then the Supervisor of Public Accounts shall make in any manner feasible, and cause to be recorded in the mortgage records of the Parish where such person, firm, corporation or association of persons is engaged, occupied or continuing in a business or